[Cite as *Almonte v. Ohio Dept. of Transp.*, 2005-Ohio-5417.]

IN THE COURT OF CLAIMS OF OHIO

ERIC ALMONTE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-08239-AD
OHIO DEPT. OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶ 1} Plaintiff, Eric Almonte, stated he was traveling on Interstate 480 east in Cleveland when a preceding motorist struck a metal grate laying in the roadway and propelled the grate into the path of plaintiff's vehicle. The airborne metal grate struck plaintiff's car causing substantial property damage. The date and time of this incident was June 11, 2005, at approximately 5:15 p.m.

{¶ 2} Plaintiff filed this complaint seeking to recover $1,591.23, his stated cost of automotive repair resulting from the June 11, 2005, event. Plaintiff has asserted defendant, Department of Transportation ("DOT"), should be held liable for his property damage. The $25.00 filing fee was paid.

{¶ 3} Defendant denied having any knowledge of the metal grate debris on the roadway prior to plaintiff's described incident. Defendant located the debris condition at about milepost 19 on I-480 in Cuyahoga County. Defendant denied receiving any calls or complaints regarding metal grate debris on Interstate 480. Defendant denied any DOT personnel created the damage-causing condition. Defendant explained DOT personnel conducted routine roadway inspections and did not discover any loose metal grates on Interstate 480 prior to June 11, 2005.

{¶ 4} Despite filing a response, plaintiff did not present any evidence to establish the length of time the particular debris condition was on the roadway prior to the incident forming the basis of this claim. Plaintiff related, "the grate in question was left in the highway for an unknown period prior to the incident." Plaintiff did not produce any evidence to show DOT employees produced the debris condition.

CONCLUSIONS OF LAW

{¶ 5} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} In order to prove a breach of duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the defective condition developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861.

{¶ 7} For plaintiff to prevail on a claim of negligence, he must

prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.

{¶ 8} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Plaintiff has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's roadway maintenance activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to his car. *Hall v. Ohio Department of Transportation* (2000), 99-12863-AD.

IN THE COURT OF CLAIMS OF OHIO

ERIC ALMONTE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-08239-AD
OHIO DEPT. OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
9/9
Filed 9/21/05
Sent to S.C. reporter 10/11/05