



call from plaintiff on January 14, 2003 when he reported a rock came from a snowplow and damaged his truck radiator. Defendant related its records show brine was made on January 13, 2003 and snowplows were used on January 14, 2003 on US Route 52. According to defendant, five different snowplows were operating on US Route 52 on January 14, 2003. Defendant contended plaintiff has failed to produce sufficient evidence to show his property damage was proximately caused by the operation of a salt truck or snowplow owned by the Department of Transportation.

{¶3} Plaintiff filed a response stating he believed defendant is responsible for his property damage. Plaintiff did not submit any additional evidence to show the debris condition which caused his property damage emanated from a vehicle under the control of defendant.

{¶4} 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 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.

{¶5} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance or construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶6} 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.

{¶7} Plaintiff’s case fails because plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff’s 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. Consequently, plaintiff’s claim is denied.

{¶8} 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 shall be absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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5/23  
Filed 6/18/03  
Sent to S.C. reporter 7/9/03