



Plaintiff's brother returned with his chainsaw and helped Talbert remove the remaining tree limbs from the roadway. Once the road was clear, plaintiff drove himself to the Lancaster hospital where he was diagnosed with a fractured left tibia and fibula.

{¶ 4} Plaintiff claims that defendant's negligence caused him to suffer damages that include physical injuries, lost wages, and medical expenses. Plaintiff also seeks reimbursement for a pair of eyeglasses and a hat that he lost during the incident.

{¶ 5} In order for plaintiff to prevail upon his 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. As a general rule, defendant has a duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Dept. of Transportation* (1976), 49 Ohio App.2d 335. See, also, *Rhodus v. Ohio Dept. of Transportation* (1990), 67 Ohio App.3d 723. However, defendant is not an insurer of the safety of state highways. *Id.* at 730. In order for liability to attach to defendant for damages caused by hazards upon the roadway, plaintiff must demonstrate that defendant had actual or constructive notice of the existence of such hazard. See *McClellan v. Ohio Dept. of Transportation* (1986), 34 Ohio App.3d 247; *Knickel*, supra; *Pearson v. Ohio Dept. of Transportation* (Nov. 6, 1997), Court of Claims No. 96-06773.

{¶ 6} With regard to notice, plaintiff's testimony established the approximate time that the trees fell onto the roadway. Plaintiff testified that when he first traveled across the area around 10:40 a.m., the roadway was unobstructed. However, approximately 20 minutes later, he returned to the area and encountered the fallen trees. Neither plaintiff nor the occupants of the black car that arrived shortly after plaintiff were able to report the hazard using their cell phones. Plaintiff testified that the occupants of the black car left the scene and then returned some time later to inform him that they had called for help.

{¶ 7} Talbert testified that he received a letter from Julie Brogan, defendant's Highway Management Administrator, wherein Brogan informed him that the Perry County Sheriff's Department had been notified of the downed trees at 11:26 a.m. According to Talbert, at approximately 11:45 a.m., the sheriff's department contacted Jim Dennis, defendant's Perry County Manager, and requested his assistance to clear the roadway. Dennis determined that he could

respond to the location quicker by traveling to the location himself and by using his personal chainsaw rather than by dispatching a work crew or by traveling to the county garage to obtain one of defendant's chainsaws. Talbert testified that Dennis arrived at approximately 1:00 p.m., after the trees had already been cleared from the roadway.

{¶ 8} Plaintiff does not allege that the fallen trees were rotted, decayed, deteriorated in some way, or that the root structure was otherwise damaged for such a period of time as to place defendant on constructive notice of the hazardous condition. Indeed, testimony at trial established that heavy rain had saturated the ground. Accordingly, the court finds by a preponderance of the evidence that the condition of the ground in addition to strong winds caused the trees to fall from the adjacent hill onto the roadway.

{¶ 9} Based upon the trial testimony, the court finds that defendant had no prior notice of the fallen trees that allegedly caused plaintiff's injuries. Therefore, defendant cannot be held liable for any damages that plaintiff alleges were caused by the roadway hazard.

{¶ 10} Furthermore, plaintiff failed to prove that defendant's response to the hazard posed by the blocked roadway was unreasonable. Dean Colborne, a transportation manager who worked for defendant, explained defendant's procedure for responding to roadway hazard calls. According to Colborne, defendant maintained a "call-out list" that included the home telephone and pager numbers for defendant's employees who were on duty. Colborne explained that the county sheriff used the list to notify defendant's employees whenever assistance was needed to respond to a hazard on a state road. Colborne testified that defendant would typically send a work crew to respond to an emergency maintenance call. However, Colborne testified that, in this case, Jim Dennis responded directly to the scene rather than having to travel to defendant's garage, since his residence was only 15 to 20 miles from the accident location. Colborne testified that it was proper for Dennis to have handled the call for assistance by himself and that the time it took Dennis to arrive at the scene was reasonable under the circumstances.

{¶ 11} Based on the foregoing, the court concludes that plaintiff failed to prove that defendant breached its duty to maintain the highway in a reasonably safe condition.

{¶ 12} Moreover, the court is convinced that plaintiff's own negligent conduct was the proximate cause of his injuries under the circumstances of this case. As stated above, plaintiff



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