[Cite as *Hulett v. Ohio Dept. of Transp.*, 2003-Ohio-4013.]

IN THE COURT OF CLAIMS OF OHIO

KATHY HULETT :

Plaintiff : CASE NO. 2003-03281

v. : DECISION

OHIO DEPARTMENT OF TRANSPORTATION :

:

Defendant

: : : : : : : : : : : : : : : : :

{¶1} On June 2, 2003, defendant filed a motion for summary judgment. Plaintiff has not filed a memorandum in opposition to defendant's motion for summary judgment. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the

evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is not disputed that on August 18, 2002, at around 7:25 p.m. plaintiff lost control of her vehicle while traveling on State Route (SR) 73 in Scioto County; that her vehicle left the right side of the roadway and overturned several times before coming to rest in a private yard. Plaintiff alleges that she suffered personal injury and property damage as a result of the accident. Plaintiff claims that she lost control of her vehicle due to a slippery foreign substance on the roadway; that defendant was negligent in failing to keep SR 73 free from such a hazard.

{¶5} 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 v. Ohio Dept. of Transportation* (1976), 49 Ohio App.2d 335; *Pearson v. Ohio Dept. of Transportation* (Nov. 6, 1997), Court of Claims No. 96-06773.

{¶6} In support of the motion for summary judgment defendant submitted the affidavit of State Highway Patrol Trooper L.D. Spriggs, who arrived at the scene of plaintiff's accident at around 7:30 p.m. According to Trooper Spriggs, although the roadway was wet, he observed no standing water or slippery substance in the area where plaintiff's accident occurred.

{¶7} In his affidavit, J. Darrel Armstrong, ODOT's Roadway Service Manager, stated that he reviewed the roadway complaint logs for Scioto County and determined that there were no reports of a slippery substance on the roadway in the area at issue in the months preceding plaintiff's accident.

{¶8} Additionally, Johnny R. Jordan, an ODOT Transportation Manager I, testified by way of affidavit, that he had reviewed his Road Inspection Report Logs for SR 73 in Scioto County for the six days prior to plaintiff's accident and that he found no notations about a slippery substance on the roadway.

{¶9} The Tenth District Court of Appeals has stated:

{¶10} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.* (March 31, 2003), Franklin App. No. 01AP-1137.

{¶11} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant did not have any prior notice of the slippery substance on the roadway that allegedly caused plaintiff to lose control of her vehicle. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.

{¶12} Defendant's motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendant.

{¶13} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and 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.

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JUDGE

Entry cc:

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