

[Cite as *Mokhtari v. Ohio Dept. of Transp.*, 2003-Ohio-4924.]

IN THE COURT OF CLAIMS OF OHIO

ALI MOKHTARI, M.D.	:	
Plaintiff	:	
v.	:	CASE NO. 2003-05321-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

{¶1} On April 15, 2003, at approximate 2:00 p.m., plaintiff, Ali Mokhtari, was traveling on Interstate 270 in Franklin County, through a construction zone, when his automobile struck an orange traffic control barrel causing body damage to the vehicle. Plaintiff located this incident on Interstate 270 between the Bexley and Interstate 70 East exists. Plaintiff explained the left lane of Interstate 270 was blocked by a line of orange traffic control barrels. According to plaintiff, the barrels were positioned on the roadway by road workers, who did not anchor or secure the barrels despite the fact it was quite windy on April 15, 2003. Plaintiff suggested high winds moved a barrel from the left lane of Interstate 270 into the roadway center lane where plaintiff was driving. Plaintiff indicated the wind blown barrel struck the side and rear bumper of plaintiff's vehicle causing substantial damage. Consequently, plaintiff filed this complaint seeking to recover \$765.09, the cost of a replacement automobile bumper. Plaintiff is also seeking recover of the \$25.00 filing fee. Plaintiff acknowledged he received a \$665.09 reimbursement from his automotive insurance carrier for bumper replacement costs. Plaintiff contended all his damages were the result of negligence on the part of defendant, Department of Transportation, in failing to maintain the construction zone in a reasonably safe manner for

motorists.

{¶2} Defendant denied plaintiff's property damage was caused by any negligence involving Department of Transportation personnel or its agents. Defendant admitted its contractor Shelly & Sands, Inc. was performing roadway construction activity on Interstate 270 on April 15, 2003. This activity including placing orange traffic control barrels on the roadway. However, defendant denied the barrels were improperly positioned or improperly secured. Defendant asserted the barrel which struck plaintiff's car had previously been knocked over by a passing semi-truck. This barrel was subsequently blown into the path of plaintiff's vehicle by high winds. Defendant denied having any knowledge regarding the condition of the barrel. Therefore, defendant has argued plaintiff has failed to offer sufficient proof establishing his damage was caused by any negligent act or omission attributable to defendant or its agents.

{¶3} Defendant submitted a written statement from DaNielle St. Clair, the Safety Director for Shelly & Sands, Inc. St. Clair witnessed the incident forming the basis of this claim since she was traveling on Interstate 270 on April 15, 2003 to confer with the roadway construction project supervisor. St. Clair wrote the following narrative of the April 15, 2003 episode at issue:

{¶4} "A semi truck had clipped a barrel and knocked it over into the closed zone. Due to the high wind, it rolled into the open land and I did see a car hit it, knocking it back to the construction zone. The car did not run it over and did not stop. I went to the field office and reported it immediately. The traffic supervisor quickly went out and corrected the barrels. All of the barrels are weighted with double tire rings as required but the impact of the truck knocked it apart."

{¶5} On July 23, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff contended the barrel that struck his car was not knocked over by a semi-truck. Plaintiff insisted he "saw the barrel fall over on its side and then get blown by the wind" into the path of his vehicle. Plaintiff reasserted the barrel which caused his property damage was not properly secured. Plaintiff reasoned that if the barrel had been secured it would not have fallen over and would not have been susceptible to being moved about by

high winds.

{¶6} Plaintiff has argued defendant's contractor acted in a negligent manner in failing to adequately secure traffic control barrels on the roadway. In order for plaintiff to prevail upon his claims 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 the damage claimed. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶7} 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.

{¶8} Further, defendant must exercise due diligence in the maintenance and repair of 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 construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶9} Conflicting evidence has been offered regarding the circumstances and causes of plaintiff's damage. Plaintiff has asserted his damage was caused by an unsecured barrel being blown about by high velocity wind gusts. Defendant contended a truck driven by an unidentified third party struck and consequently destroyed a secured barrel. According to defendant, a remnant of this destroyed barrel was then wind borne into the path of plaintiff's car causing bumper damage. This court, as the trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, the court finds as more probative defendant's version of the cause of the April 15, 2003 incident. Based on this determination of causation, no negligence on the part of defendant or its agents has been shown. Plaintiff's claim is denied.

{¶10} 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
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