

[Cite as *Najjar v. Ohio Dept. of Transp., Dist. 12, 2004-Ohio-3282.*]

IN THE COURT OF CLAIMS OF OHIO

ANN M. NAJJAR :  
Plaintiff :  
v. : CASE NO. 2004-02288-AD  
OHIO DEPARTMENT OF : MEMORANDUM DECISION  
TRANSPORTATION, DISTRICT 12 :  
Defendant :  
: :::::::::::::::

FINDINGS OF FACT

{¶1} 1) On January 29, 2004, plaintiff, Ann M. Najjar, was traveling north on Interstate 71 at milepost 237.48 in Cuyahoga County when her car struck an orange traffic control cone in the traveled portion of the roadway. Plaintiff asserted her vehicle was substantially damaged as a result of striking the orange cone.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$198.04, the cost of automotive repair. Plaintiff contended her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant denied any liability based on the fact it did not have any knowledge of the orange cone laying on the roadway surface. Defendant denied the damage-causing cone was DOT property.

{¶4} 4) On April 5, 2004, plaintiff submitted a response to

defendant's investigation report. However, plaintiff did not submit any evidence establishing defendant as the owner of the damage-causing cone. Plaintiff did not produce any evidence showing the length of time the cone was positioned on the roadway prior to her property damage incident.

#### CONCLUSIONS OF LAW

{¶5} Defendant has the duty to maintain its highways in a reasonable 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. Further, defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶6} Ordinarily, in a claim involving roadway debris in order to recover, plaintiff must prove either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. Plaintiff has failed to prove defendant had knowledge of the debris. Plaintiff has failed to prove the debris condition evolved from negligent maintenance. Plaintiff failed to show the damage-causing object was connected to any negligence on the part of defendant, defendant was negligent in maintaining the area, or any negligence on the part of defendant. *Brzuszkiewicz v. Dept. of Transportation* (1998), 97-12106-AD; *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.

{¶7} 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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For Defendant

DRB/RDK/laa  
5/6  
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