

IN THE COURT OF CLAIMS OF OHIO

STEVEN G. RAIFF :

Plaintiff :

v. :

CASE NO. 2004-02377-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION, DISTRICT 12 :

MEMORANDUM DECISION

Defendant :

.....

FINDINGS OF FACT

{¶1} 1) On December 10, 2003, plaintiff, Steven G. Raiff, was traveling east on Interstate 90 near milepost 8.10 in Cuyahoga County, when a preceding motorist struck an uprooted road reflector and propelled the reflector into the path of plaintiff's vehicle. The reflector struck the front grill of plaintiff's automobile and became imbedded in the vehicle's air condition condenser.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$2,117.42, the cost of automotive repair, plus \$25.00 for filing fee reimbursement. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) Plaintiff has suggested the reflector was originally uprooted by snow plowing activities conducted by defendant.

{¶4} 4) Defendant denied the roadway reflector was uprooted by any conduct under its control. Defendant asserted the reflector was uprooted by an unidentified motorist. Therefore, defendant contended it cannot be held liable for the act of an unidentified third party.

{¶5} 5) Defendant denied having any knowledge of the damage causing reflector on the roadway.

{¶6} 6) Plaintiff has failed to produce evidence showing the length of time the broken reflector existed on the roadway prior to his incident.

#### CONCLUSIONS OF LAW

{¶7} Defendant has the duty to keep the roads 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 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 activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of*

*Transportation* (1992), 91-07526-AD.

{¶9} 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.

{¶10} Ordinarily, in a claim involving damages caused by broken road reflectors, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition (broken reflector) 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.

{¶11} Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Ohio Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶12} Plaintiff has not produced any evidence to indicate the length of time the damage causing reflector was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the reflector's condition. Additionally, the trier of fact is precluded from making an

inference of defendant's constructive notice, unless evidence is presented in respect to the time the defective condition (reflector) appeared. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the reflector's condition. Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition (reflector). *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶13} 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.

{¶14} 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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RDK/laa  
5/5  
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