

[Cite as *Schlessman v. Dept. of Transp.*, 2004-Ohio-5046.]

IN THE COURT OF CLAIMS OF OHIO

JOHN W. SCHLESSMAN	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2004-06232-AD
	:	
DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	

.....

FINDINGS OF FACT

{¶ 1} 1) On May 10, 2004, at approximately 11:22 a.m., plaintiff, John W. Schlessman, was traveling west on Interstate 480 near milepost 23.0 in Cuyahoga County, when a preceding motorist struck debris laying on the roadway causing the debris to fly into the path of plaintiff’s car. The debris, described by plaintiff as a “door from a utility truck,” hit the front of plaintiff’s automobile resulting in substantial property damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$635.02, the complete cost of his automotive repair. Plaintiff contended defendant, Department of Transportation, should be responsible for the property damage sustained on May 10, 2004. The requisite material filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the assertion it had no knowledge the debris condition was on the roadway prior to plaintiff’s incident. Plaintiff did not present any evidence to indicate the length of time the debris condition was on the roadway prior to his property-damage occurrence.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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 or construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Plaintiff, in the instant claim, has failed to prove defendant negligently maintained the roadway.

{¶ 6} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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. For constructive notice to be proven, plaintiff must show sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD. 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 (debris) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing debris.

{¶ 7} 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 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.

{¶ 8} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his 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.

IN THE COURT OF CLAIMS OF OHIO

JOHN W. SCHLESSMAN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06232-AD
DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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

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:

John W. Schlessman

Plaintiff, Pro se

158 Willard Avenue
Bedford, Ohio 44146

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa
8/13
Filed 8/24/04
Sent to S.C. reporter 9/22/04