

[Cite as *Pollitt v. Ohio Dept. of Transp.*, 2006-Ohio-7236.]

IN THE COURT OF CLAIMS OF OHIO

SARA POLLITT :
Plaintiff :

v. :

CASE NO. 2005-11361-AD

OHIO DEPARTMENT OF :
TRANSPORTATION :
Defendant :

MEMORANDUM DECISION

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{¶ 1} On October 4, 2005, at approximately 9:15 a.m., plaintiff, Sara Pollitt, suffered property damage to her 1993 Toyota Corrola, while traveling north on Interstate 75 near milepost .5 in Cincinnati. Specifically, plaintiff asserted her automobile was "struck by debris which had fallen from the 5th St. overpass" spanning Interstate 75. Plaintiff explained she was driving behind a semi-truck on Interstate 75 and her car was struck by falling debris as she traveled under the 5th Street overpass.

{¶ 2} The hood, roof, trunk, fender, bumper cover, and headlamp of plaintiff's vehicle were damaged by the falling debris. Plaintiff filed this complaint seeking to recover \$250.00, her insurance coverage deductible for automotive repair resulting from the October 4, 2005, incident. Plaintiff contended she incurred these repair expenses as a proximate cause of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the 5th Street overpass spanning Interstate 75. The filing fee was paid.

{¶ 3} Defendant denied any liability in this matter.

Defendant asserted no DOT personnel were aware of any problems with the overpass spanning Interstate 75. Defendant contended plaintiff failed to produce sufficient evidence to establish her car was damaged by structural debris falling from the roadway overpass.

{¶ 4} Defendant denied receiving any calls or complaints regarding problems with structural integrity of the overpass prior to plaintiff's October 4, 2005, incident. Furthermore, defendant suggested plaintiff's property damage was caused by debris that "was kicked up from a vehicle traveling across the overpass," and not from the overpass structure. Defendant explained a post incident inspection was conducted of the overpass and the DOT inspector "reported no signs of falling concrete or damage to the overpass." Therefore, defendant insisted plaintiff failed to prove her property damage was caused by any act or omission attributable to DOT.

{¶ 5} On April 10, 2006, this court issued an entry granting plaintiff an extension of time to submit a response to defendant's investigation report. However, plaintiff has failed to submit a response.

{¶ 6} 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. DOT has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42. However, DOT is not an insurer of the safety of its highways. *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App.

3d 723.

{¶7} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio Misc. 3d 75, 77. Plaintiff has the burden of proving, by a preponderance of the evidence, that she 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} This court has previously held DOT liable for property damage resulting from falling debris. *Elsev v. Dept. of Transportation* (1989), 89-05775-AD. 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, plaintiff has failed to show the damage-causing object was connected to any act or omission on the part of defendant, defendant was negligent in maintaining the area, or any other 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.

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