

[Cite as *Toms v. Ohio Dept. of Transp.*, 2006-Ohio-7159.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY TOMS	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2005-11710-AD
	:	
OHIO DEPARTMENT OF	:	<u>MEMORANDUM DECISION</u>
TRANSPORTATION	:	
	:	
Defendant	:	

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

{1} Plaintiff, Jeffrey Toms, explained he was traveling on State Route 503 on August 27, 2005, towing another vehicle on a trailer when his trailer was damaged as a result of being pelted by stone debris laying on the roadway. Plaintiff offered a written description of the incident stating: "I was still heading [n]orth towards SR 127. Just past Ithaca the road had been repaired and signs were posted that stated 'loose stone.' There was no change in speed limit sign posted but I slowed to 35 miles per hour because I didn't feel comfortable driving that fast over loose stone, especially when I am towing my show car. Even going that fast I could tell that the loose stone was hitting my trailer and car." After driving through this area, plaintiff pointed out he stopped his vehicle and inspected his trailer and towed car discovering broken lenses and paint chipped from the fenders and front frame section of the trailer.

{2} Plaintiff filed this complaint asserting defendant, Department of Transportation ("DOT"), should bear liability for the damage to his trailer. Plaintiff contended DOT placed gravel on State Route 503, thereby creating a hazardous

condition for motorists. Plaintiff seeks damages in the amount of \$371.62 for trailer repair costs, plus \$25.00 for filing fee reimbursement. The filing fee was paid. Plaintiff submitted photographs depicting the damage to his trailer.

{3} Defendant denied any liability in this matter. Defendant denied any DOT work crews placed gravel or stone on the roadway on or before August 27, 2005, at the area of plaintiff's described incident, which defendant located, "at milepost 7.70 on SR 503 @ US 127 in Darke County." Defendant explained DOT workers placed "Loose Stone and Fresh Tar" signs along State Route 503 on September 1, 2005, in preparation for maintenance work scheduled to begin on September 8, 2005. Defendant reasserted no road work was performed on or about August 27, 2005, and therefore DOT did not place any stone or gravel on State Route 503 at the time of the alleged incident, Saturday, August 27, 2005. Defendant asserted all proper safety precautions were utilized when road maintenance work actually began in September, 2005.

{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 the safety of its highways. See

{5} *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{6} In order to prove a breach of duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. 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 developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861.

{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. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, ¶8 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 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 fails 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 failed to establish his damage was proximately caused by any negligent act or omission on the part of DOT. In fact, the sole cause of plaintiff's injury was the act of an unknown third party which did not involve DOT. Plaintiff has failed to prove, 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.

IN THE COURT OF CLAIMS OF OHIO

JEFFREY TOMS :

Plaintiff :

v. :

CASE NO. 2005-11710-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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

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:

Jeffrey Toms  
4312 N. State Rte. 503  
Lewisburg, Ohio 45338

Plaintiff, Pro se

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

For Defendant

3/29

Filed 4/5/06

Sent to S.C. reporter 5/4/06