

[Cite as *Porter v. Ohio Dept. of Transp.*, 2006-Ohio-7197.]

IN THE COURT OF CLAIMS OF OHIO

TRICIA PORTER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2006-01271-AD
 :
 DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
 :
 Defendant :

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

{¶ 1} On December 24, 2005, plaintiff, Tricia Porter, was traveling south on State Route 7, "between Shadyside [and] the Moundsville bridge," when her automobile struck a rock which was laying on the right edgeline of the roadway. Plaintiff explained another car was traveling in the left southbound lane, "a little over the center line," next to her vehicle and she drove to the right, "to avoid hitting or being hit by that car." As plaintiff maneuvered her vehicle to the right side of the traveling road lane, she saw a rock about one to two feet long laying on the edge of the paved roadway. Plaintiff related she tried to avoid the rock, but ran over it causing tire and rim damage to her automobile. Plaintiff observed the damage-causing rock had apparently "come off the hillside" adjacent to the roadway and "bounced over the retaining wall" erected along the paved roadway berm area.

{¶ 2} Plaintiff filed this complaint alleging the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to keep State Route 7 free of rock debris. Plaintiff is seeking

\$238.27, the cost of automotive repair resulting from the December 24, 2005, incident, plus filing fee reimbursement.

{¶ 3} Defendant denied any liability in this matter based on the contention DOT personnel did not have any knowledge about rock debris on State Route 7 prior to the December 24, 2005, property damage occurrence. Defendant located this damage occurrence at about milepost 9.05 on State Route 7 in Belmont County. Defendant related no phone calls or other complaints concerning rock debris on the roadway were received during the period extending over a year to December 24, 2005. Furthermore, defendant explained periodic litter patrol operations and roadway inspections were conducted in the area and no problems were discovered. Patrols were conducted on December 22, 2005, and no roadside debris was found. Defendant suggested the rock debris probably existed on the particular area of State Route 7 for "only a relatively short amount of time before" plaintiff's incident. Defendant denied acting negligently in respect to roadway maintenance.

{¶ 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 *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Cole v. State* (1979), 78-0805-AD. The facts of the instant claim do not establish defendant breached

any duty in respect to signage or roadway maintenance.

{¶ 5} Therefore, in order for plaintiff to recover under a negligence theory she must prove, by a preponderance of the evidence, defendant had actual or constructive notice of the rocky debris and failed to respond in a reasonable time or responded in a negligent manner. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Department of Transportation* (1985), 84-03278-AD. A breach of the duty to maintain the highways must be proven, by a preponderance of the evidence, showing 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. In the instant claim, plaintiff has failed to prove defendant had requisite notice of the damage-causing rock debris. No facts have shown defendant had actual or constructive notice of the rock fall which proximately caused plaintiff's damage.

{¶ 6} Both plaintiff and DOT in a general sense, had notice of rock falls occurring on the portion of State Route 7 in question. However, plaintiff has failed to prove, by a preponderance of the evidence, that defendant knew or should have known the particular rock fall which resulted in plaintiff's property damage was likely to occur on December 24, 2005. Plaintiff has failed to prove the particular rock face from which the roadway debris originated showed any signs of instability before December 24, 2005. The precautionary, inhibiting, and inspecting measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public. Consequently, plaintiff has failed to present

any set of facts to invoke ensuing liability on DOT. See *Mosby v. Dept. of Transportation* (1999), 99-01047-AD.

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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:

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Plaintiff, Pro se

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For Defendant

5/24

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