

[Cite as *Hanna v. Ohio Dept. of Transp.*, 2006-Ohio-7239.]

IN THE COURT OF CLAIMS OF OHIO

DONNA J. HANNA :
 :
 Plaintiff :
 :
 v. : CASE NO. 2006-02064-AD
 :
 OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
 :
 Defendant :

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

{¶ 1} Plaintiff, Donna J. Hanna, stated she was driving on Interstate 75 on January 17, 2006, when she traveled under an overpass bridge spanning the roadway and, "heard a loud thud noise on the top of [the] roof of [her] car." Plaintiff related some unidentified debris fell from the roadway overpass and struck the sunroof on her 2002 Ford Escape. After parking her vehicle, plaintiff noticed the sunroof on her Ford Escape was "shattered."

{¶ 2} Plaintiff contended defendant, Department of Transportation ("DOT"), should bear liability for the damage to the sunroof on her vehicle. Plaintiff filed this complaint seeking to recover \$543.22, the total replacement cost of a sunroof. The filing fee was paid.

{¶ 3} Defendant denied liability in this matter. Defendant asserted no DOT personnel were aware of any problems with the overpass which defendant located at milepost 0.38 in Warren County on Interstate 75. Furthermore, defendant contended plaintiff did not offer sufficient evidence to prove her property damage was caused by debris falling from the roadway overpass.

Defendant explained plywood has been in place under the overpass since 2003 to apparently inhibit problems with falling debris. Also, the overpass was periodically inspected by DOT and no problems were noted.

{¶ 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. 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.

{¶ 5} 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 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.

{¶ 6} 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 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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OHIO DEPT. 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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For Defendant

7/11

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