

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

KEVIN N. BUCK

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-06035-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Kevin N. Buck, stated he was driving his motorcycle on US Route 33 on September 8, 2006, at about 4:30 p.m., when the vehicle, “bottomed out from uneven pavement,” causing substantial property damage. Plaintiff related this uneven pavement condition was located approximately two miles past, “[C]oonpath overpass 2nd bridge left lane.”

{¶2} 2) Plaintiff explained there were no signs or other warning devices posted to inform motorcyclists of the dangerous pavement condition on US Route 33 in Fairfield County. Plaintiff asserted his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a dangerous roadway condition for motorcycle traffic and failing to warn motorcyclists of the existing dangerous roadway condition. Consequently, plaintiff filed this complaint seeking to recover \$1,192.46, his cost of vehicle repair, plus \$25.00 for filing fee reimbursement. The filing fee was paid.

{¶3} 3) Defendant denied receiving any prior calls or complaints about an uneven pavement condition before plaintiff’s September 8, 2006 incident. Defendant suggested the particular condition which DOT located, “at milepost 11.58 on US 33 in Fairfield County,” was present, “for only a relatively short amount of time before plaintiff’s

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incident.” Additionally, defendant noted DOT Fairfield County Manager drove over the particular portion of roadway and did not see, “any pavement deficiencies at the second bridge past Coonpath Road on US 33.” Defendant contended plaintiff failed to produce any evidence to establish his property damage was caused by any negligent act or omission on the part of DOT personnel.

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 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.

{¶5} 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. Ohio 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.

{¶6} 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.*

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(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.

{¶7} Plaintiff has failed to prove, by a preponderance of the evidence, that defendant breached a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show his property damage 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.

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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:

Kevin N. Buck
12525 E. Buck Run Road
Rockbridge, Ohio 43149

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

RDK/laa
1/4
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