

[Cite as *Vance v. Ohio Dept. of Transp.*, 2007-Ohio-1278.]

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

CHRISTINE VANCE

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-06698-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Christine Vance, stated she was traveling south on Interstate 270, “from Dublin to Grove City,” on September 21, 2006, about 4:52 p.m., when her automobile struck a semi-truck mud flap laying in the middle lane of the roadway. The mud flap lodged in the grill of plaintiff’s vehicle causing substantial damage to the bumper cover, condenser, cooler pipe, nose mask, and power steering line of the car.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,233.73 for automotive repair, work loss expenses, and filing fee costs. Plaintiff asserted she incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant has denied any liability for plaintiff’s damage. Defendant denied having any knowledge of the mud flap prior to plaintiff’s incident. Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to her property damage occurrence. Defendant conducts frequent litter inspections and litter pick-up operations in the area of plaintiff’s September 21, 2006, property damage event. Defendant denied receiving any calls or complaints about debris on the roadway between mileposts 2.13 to 17.31 on Interstate 270 in Franklin County (the approximate location of plaintiff’s damage occurrence). Defendant suggested the debris existed at that location, “for only a relatively short amount of time before plaintiff’s incident.”

CONCLUSIONS OF LAW

{¶4} Defendant has the duty to maintain its highway 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 recover in any suit involving injury proximately caused by roadway conditions including debris, plaintiff must prove either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶6} 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.

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{¶7} Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris. Additionally, 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 debris appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶8} Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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:

Christine Vance
1205 Obetz Road
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Keith Swearingen, Acting Director
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RDK/laa
1/26
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