

[Cite as *Washington v. Ohio Dept. of Transp.*, 2007-Ohio-1757.]

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

VERNELL WASHINGTON

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-06841-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On Saturday, September 16, 2006, at approximately 6:30 a.m., plaintiff, Vernell Washington, was traveling on Interstate 270 between the New Albany and Easton exits, when her automobile struck an orange traffic control barrel laying sideways on the traveled portion of the roadway. The impact with the traffic control barrel caused damage to the front bumper of plaintiff's vehicle. The incident occurred within a construction zone between mileposts 30.52 and 30.54 on Interstate 270 in Franklin County.

{¶2} Plaintiff filed this complaint seeking to recover \$540.73, the cost of automotive repair and filing fee expenses related to the September 16, 2006, property damage event. Plaintiff paid the \$25.00 filing fee. Plaintiff asserted the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), or its agents in failing to maintain proper positioning of the traffic control barrels or installing defective barrels.

{¶3} Defendant denied liability for this matter based on the contention that none of defendant's agents was aware of the displaced traffic barrel which ultimately caused plaintiff's property damage. Defendant stated it is unknown to defendant or its contractor, The National Engineering & Contracting Company ("National"), the circumstances involved in how the traffic control barrel became displaced. DOT denied National proximately caused plaintiff's damage by placing a defective barrel on the roadway. Defendant denied placing the barrel on the roadway and suggested the barrel was deposited on the highway by an unidentified third party at some undetermined time prior to plaintiff's damage occurrence.

{¶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} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her 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 she suffered a loss and that this loss was proximately caused by

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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." *Steven v. Indus. Comm.* (1945), 145 Ohio St. 1981, approved and followed.

{¶16} Ordinarily, in a claim involving roadway debris which includes out of position traffic control devices, plaintiff must prove either: 1) defendant had actual or constructive notice of the out of position traffic control device 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. 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.

{¶17} Plaintiff has not produced any evidence to indicate the length of time the traffic barrel 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 misplaced barrel. 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 traffic barrel appeared in the traveled portion of the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the barrel's location. 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 traffic barrel to be in the traveled portion of the roadway. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶18} Plaintiff has failed to show, 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

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barrel was connected to any negligence on the part of defendant, defendant was negligent in maintaining the construction area, or any negligence on the part of the defendant. *Clark v. Ohio Department of Transportation* (2006), 2006-03346-AD.

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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:

Vernell Washington
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James Beasley Director
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RDK/laa
2/8
Filed 2/26/07
Sent to S.C. reporter 4/13/07