

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

DEBORAH TURNER

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-07490-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Deborah Turner, asserted she suffered property damage to the body of her automobile while driving through a roadway construction area on August 4, 2006, at about 9:00 p.m. Plaintiff related she traveled east on Interstate 90 through a construction area near the 200th Street Exit in Cleveland, exited the roadway at the 222 Exit, and continued to her home approximately two blocks from the exit, where she parked her car. Plaintiff further related that before she got in her car to leave home on August 5, 2006, she noticed the vehicle's, "exterior had a large amount of paint chips." From observing her car, plaintiff concluded the paint chip damage was consistent with damage caused by concrete debris pelting the vehicle as it traveled through a construction zone. Plaintiff suggested her property damage was caused by debris emanating from roadway construction activity.

{¶2} Plaintiff contended defendant, Department of Transportation ("DOT"), should bear liability for the costs she incurred repairing her automobile. Consequently, plaintiff filed this complaint seeking to recover \$250.00, her insurance coverage deductible for automotive repair resulting from the August 4, 2006, described incident. The filing fee was paid.

{¶3} Defendant acknowledged the roadway area where plaintiff's stated damage event occurred was located within a construction zone where DOT contractors were engaged in "sawing concrete" in two closed lanes of Interstate 90 East. Plaintiff was

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driving her car in the remaining open to traffic lane of Interstate 90 East. Defendant pointed out this particular roadway construction zone was under the control of DOT contractor, All Seasons Contracting, Inc. (“All Seasons”). All Seasons personnel dispute plaintiff’s allegations regarding her damage emanating from construction activity performed on August 4, 2006. According to the All Seasons representatives, the act of sawing concrete creates dust particles which would not have caused the paint damage described by plaintiff. Defendant maintained plaintiff has failed to produce sufficient evidence to establish the paint chip damage to her vehicle was caused by construction activity on Interstate 90 East on August 4, 2006.

{¶4} Defendant has contended DOT has no responsibility for damage incidents occurring in a construction zone under the control of a contractor. Defendant asserted All Seasons, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued All Seasons is the proper party defendant in this action. Defendant implied all duties such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair defects, were delegated when an independent contractor takes control over a particular roadway section. The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation*, 2003-09343-AD, jud, 2004-Ohio-151. Furthermore, despite defendant’s contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with a duty to inspect the construction site and correct any known deficiencies in connection with particular construction work. See *Roadway Express, Inc. v. Ohio Dept. of Transp.* (June 28, 2001), Franklin App. 00AP-119, 2001 Ohio App. LEXIS 2854.

{¶5} 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.

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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.

{¶6} In order to find liability for a damage claim occurring in a construction area, the court must look at the totality of the circumstances to determine whether DOT acted in a manner to render the highway free from an unreasonable risk of harm for the traveling public. *Feichtner v. Ohio Dept. of Transp.* (1995), 114 Ohio App. 3d 346. In fact, the duty to render the highway free from unreasonable risk of harm is the precise duty owed by DOT to the traveling public under both normal traffic conditions and during highway construction projects. See e.g. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42. Plaintiff, in the instant claim, has failed to prove defendant or its agents breached any duty of care which resulted in property damage. Plaintiff has not submitted sufficient proof to establish her property damage was caused by any negligent act or omission on the part of DOT or its agents.

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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:

Deborah Turner
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James Beasley, Director
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1980 West Broad Street
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RDK/laa
3/29
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