[Cite as *Hills v. Ohio Dept. of Transp.*, 2007-Ohio-2679.]

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

DAVID L. HILLS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2006-07554-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On October 10, 2006, Krista M. Hills filed a report with the Akron Police Department noting her 2006 Chevrolet Cobalt was damaged earlier in the day when the vehicle ran over a fallen construction sign while traveling on Interstate 77 North through a construction zone. As part of the filed report, Krista M. Hills made a written statement describing the property damage incident. Hills recalled she was traveling north on Interstate 77, through a construction zone about 11:30 a.m., when she saw a "sign fall (construction-temp sign) ahead." Hills further recalled she could not maneuver her vehicle to avoid the fallen sign due to traffic and related the sign, "hit my front bumper, slice grill in front, slid underneath car, came out side." Krista M. Hills located this damage event on, "I77 2 miles South Miller/Ridge Wood exit."

{¶2} Plaintiff, David L. Hills, the father of Krista M. Hills, filed this complaint seeking to recover $2,363.82, the total repair cost for Krista M. Hills' car caused by driving over a downed sign. Plaintiff suggested the October 10, 2006, property damage described was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining signs along the roadway. The filing fee was paid.

{¶3} Defendant denied any liability in this matter. Defendant confirmed the area where the Krista M. Hills' incident occurred (at milepost 131.40 on I-77 in Summit County) was located within a construction zone under the control of DOT contractor, Great Lakes

Construction Company ("Great Lakes"). Defendant explained Great Lakes had its sub-contractor, Cleveland Barricading Systems, monitoring the work zone on Interstate 77 on October 10, 2006. Defendant asserted neither DOT nor any DOT contractor had any knowledge of a downed sign on Interstate 77 prior to Krista M. Hills' property damage event. Evidence has shown a downed "Merge" sign was discovered on the roadway ramp at sometime between 3:00 p.m. and 7:00 p.m. on October 10, 2006. Defendant stated the downed "Merge" sign was located, "on the ramp of northbound Ridgewood/Miller roads, which is . . . state milepost 133.40."

{¶4} Defendant contended plaintiff has failed to offer sufficient proof to establish any acts by DOT or its contractors caused the property damage claimed. Defendant related no calls or complaints regarding a fallen sign were received prior to 11:30 a.m. on October 10, 2006. Defendant did not offer any explanation regarding how the "Merge" sign was downed.

{¶5} Defendant as 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.

{¶6} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶7} 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.

{¶8} 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 him 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 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.

{¶9} 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 produce sufficient evidence to determine the property damage claimed was caused by a sign that was negligently installed or inspected by defendant or its agents.

{¶10} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed or that the injury claimed was proximately caused by defendant's negligence. Plaintiff failed to show that the property damage was connected to

any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *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

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:

David L. Hills
4839 Cherimoya Avenue
Akron, Ohio 44319

James Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
3/28
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