

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

JELENA RUSSINOVA

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-01835-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On December 12, 2006, plaintiff, Jelena Russinova, was traveling east on Interstate 90 near the, “E 152 exit,” in Cuyahoga County, when her automobile struck debris laying on the roadway. The roadway debris, described by plaintiff as, “the hood of [a] car,” caused substantial damage to plaintiff’s vehicle.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$367.99, the total cost of automotive repair resulting from the December 12, 2006, incident. Plaintiff contended her property damage was proximately caused by 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 debris condition 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 patrols and inspections in the area of plaintiff’s December 12, 2006, property damage event. Defendant suggested the automobile body debris condition was on the roadway, “for only a relatively short amount of time before plaintiff’s incident.” Defendant denied receiving any calls or complaints about automobile body debris on Interstate 90 prior to

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plaintiff's damage occurrence. Defendant acknowledged a prior complaint regarding Interstate 90 roadway debris (a large piece of metal) was received on December 7, 2006. However, the debris condition report on December 7, 2006, was located in a different area of Interstate 90 from the location where plaintiff's December 12, 2006, damage incident occurred.

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 the 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.

{¶6} Plaintiff has not produced sufficient evidence to indicate the length of time the debris was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown 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. There is no indication defendant had constructive notice of the debris.

{¶7} 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.

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Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jelena Russinova

James G. Beasley, Director

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1415 Francis Court
South Euclid, Ohio 44121

Department of Transportation
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RDK/laa
6/26
Filed 7/26/07
Sent to S.C. reporter 9/20/07