

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

TRUDY HARDING

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-04729-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Trudy Harding, stated that she was traveling east on US Route 30 near mile marker 6 in Massillon, through a construction area, when her automobile struck an object laying on the roadway. The object caused tire damage to plaintiff's vehicle. Plaintiff recalled that the described incident occurred at approximately 6:35 a.m. on July 26, 2006.

{¶2} 2) Plaintiff contended that the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in keeping the roadway free of hazardous debris. Plaintiff filed this complaint seeking to recover \$183.63 for replacement part costs and associated repair expenses. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of debris on the roadway prior to plaintiff's property damage event. Defendant denied receiving any calls or complaints about roadway debris near the described location, milepost 6.00 on US Route 30 in Stark County. Defendant explained that at the time of plaintiff's incident, July 26, 2006, roadway construction on US Route 30 had not begun. Defendant suggested that the debris

plaintiff's vehicle struck, "existed in that location for only a relatively short amount of time before plaintiff's incident." Defendant noted that DOT conducted litter pick-up operations near milepost 6.00 on US Route 30 in Stark County on July 12, 2006.

{¶4} 4) Despite filing a response, plaintiff did not produce any evidence to establish the length of time the damage-causing debris condition was present on the roadway before 6:35 a.m. on July 26, 2006.

CONCLUSIONS OF LAW

{¶5} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶6} 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 highway negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶7} 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶8} 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 that 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, 577 N.E. 2d 458. No evidence has shown defendant had constructive

notice of the roadway debris.

{19} 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 debris. *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.

MILES C. DURFEY
Clerk

Entry cc:

Trudy Harding
1315 Amanda Street S.W.
Massillon, Ohio 44647

James G. Beasley, Director
Department of Transportation
1980 West Broad Street

Columbus, Ohio 43223

RDK/laa

9/6

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