[Cite as *Imes v. Ohio Dept. of Transp.*, 2007-Ohio-7252.]

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

ARNOLD IMES

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-06594-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Arnold Imes, stated he was driving his 1999 Lincoln Continental, "in the westbound lanes of I 480 at the on ramp of Warrensville Center Road," when the vehicle's windshield was damaged by, "ground road materials," that had fallen from a truck owned by Karvo Paving Company ("Karvo"). Plaintiff explained the damage to his car occurred within a roadway construction area on June 8, 2007, between 10:30 and 10:45 p.m. Plaintiff recalled the truck carrying the "ground road materials" was a "red dump truck" with an open uncovered bed.

{¶2} Plaintiff related he stopped his car at the construction job site within minutes after the described property damage incident where he talked to an employee of defendant, Department of Transportation ("DOT"). Plaintiff claimed the DOT employee, who identified herself as Deidre, told him the red dump truck that caused his property damage was owned by Karvo based on his "description and time of incident." Additionally, plaintiff claimed an unidentified Karvo employee at the job site, "concurred that the red dump truck was a Karvo vehicle on site at that particular time."

{¶3} Plaintiff implied the damage to his car windshield was proximately caused by negligence on the part of DOT in failing to maintain the construction area on Interstate 480 in Cuyahoga County. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of $387.49, the total cost of a replacement

windshield, plus $100.00 for work loss. Plaintiff paid the $25.00 filing fee and requested reimbursement of that amount as compensable costs.

{¶4} Defendant acknowledged the location of plaintiff's alleged property damage incident occurred within the limits of a construction project area maintained by DOT contractor, Karvo. Defendant explained the construction project involved roadway grading, draining, and paving between county mileposts 21.88 to 26.15 on Interstate 480 in Cuyahoga County. Plaintiff's description of the damage occurrence placed him at county milepost 23.86, an area within the construction zone. Defendant contended Karvo maintained exclusive control of the construction area, although the project was performed in accordance with DOT requirements and specifications and DOT personnel were on site. Defendant argued Karvo was responsible for any property damage occurrences on site such as the occurrence claimed by plaintiff.

{¶5} Alternatively, defendant contended plaintiff failed to offer sufficient evidence to establish the property damage claimed was the result of any conduct attributable to either DOT or Karvo. Defendant asserted plaintiff failed to prove the debris that damaged his automobile emanated from a truck under the control of either DOT or Karvo. Defendant submitted a document from DOT Project Inspector, Matt Manteghi, addressing the events of June 8, 2007, and plaintiff's damages complaint. Manteghi acknowledged Karvo was involved on the night of June 8, 2007, with repaving the on ramp to Interstate 480 west; work that included pavement grinding and cleaning, which was completed by 9:00 p.m. Manteghi reported twelve trucks were used that evening to haul milling debris. Most of the twelve trucks used were owned by contractors of Karvo. According to Manteghi, plaintiff did stop his car at the construction site and did complaint to DOT employee, Didra that the car's windshield had been damaged, ostensibly from roadway debris falling from a truck. Manteghi recorded plaintiff, "was asked to stay on the job and point out the truck in question, He did stay on but could not find the truck in question."

{¶6} Defendant also submitted correspondence concerning the claimed

incident from Karvo Safety Risk Manager, Cathleen Geddes, who initially observed Karvo complied with all DOT mandated traffic control during the June 8, 2007, paving operation. Geddes noted several dump trucks owned by Karvo contractors were used on the paving operation and all trucks used were equipped with tarpaulins Geddes related when plaintiff arrived at the job site reporting his damage, he was requested to identify the truck involved in the damage incident and could not identify the particular truck involved. Although plaintiff has asserted the damage-causing truck was red in color, Geddes maintained no red dump trucks were dispatched to the June 8, 2007, repaving project.

{¶7} 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. 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. *Cowell v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-09343-AD, jud, 2004-Ohio-151. Despite defendant's contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with duties 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. No. 00AP-1119. No evidence other than plaintiff's assertion has been produced to show a hazardous condition was maintained by either DOT or Karvo.

{¶8} Defendant professed liability cannot be established when requisite notice of damage-causing debris conditions cannot be proven. Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept.*

of Transp. (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. However, proof or notice of a dangerous condition is not necessary when defendant's own agents actively cause such conditions. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Department of Transportation* (1996), 94-13861. In the instant claim, evidence is inconclusive regarding the origin of the debris which damaged plaintiff's vehicle. Defendant insisted the debris condition was not caused by maintenance of construction activity. However, defendant may still bear liability if it can be established if some act or omission on the part of DOT was the proximate cause of plaintiff's injury. This court, as the trier of fact, determines the questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶9} "If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815 quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶10} 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, 683 N.E. 2d 112. 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, 564 N.E. 2d 462. Plaintiff, in the instant claim, has failed to prove defendant or its agents breached any duty of care which resulted in property damage. Evidence available does not prove plaintiff's damage was

proximately caused by any negligent act or omission on the part of DOT or its agents. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant or 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

12/5
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