

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

SANDRA JOHNSON

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-07281-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Sandra Johnson, stated that she was traveling south on Interstate 75 on August 10, 2007, at approximately 12:30 p.m., when her 2003 Buick Rendezvous CX struck debris in the roadway puncturing the vehicle's gas tank.

{¶2} 2) Plaintiff implied that the damage to her vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining a hazardous condition on the roadway. Plaintiff filed this complaint seeking to recover \$500.00¹, her insurance coverage deductible for automotive repair costs she incurred as a result of the described incident. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that amount along with her damage claim.

{¶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 damage occurrence. Defendant denied receiving any prior calls or complaints regarding debris, which defendant located at milepost 22.0 in Butler County. Defendant suggested that, "the debris existed in that location for only a relatively short amount of time before

¹ R.C. 2743.02(D) states:

"Recoveries against the state shall be reduced by the aggregate of insurance proceeds . . .

plaintiff's incident." Defendant explained that DOT personnel conducted nineteen litter pickup operations on Interstate 75 during the six-month period preceding plaintiff's described damage event. According to defendant's records, litter patrol crews worked in the area of plaintiff's incident on August 9, 2007. Defendant argued that plaintiff failed to offer evidence to establish DOT negligently maintained the roadway in question.

{¶4} 4) Despite filing a response, plaintiff did not produce any evidence to establish the length of time the debris condition existed on Interstate 75 prior to 12:30 p.m. on August 10, 2007.

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 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, 517 N.E. 2d 1388. Defendant is only liable for roadway condition 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.

received by the claimant."

{¶7} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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 highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. For constructive notice to be proven, plaintiff must shown that sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD . 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 (debris) appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing debris.

{¶8} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 79, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that she 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.* Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶9} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately

caused by defendant's negligence. Plaintiff failed to show that the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *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.

MILES C. DURFEY
Clerk

Entry cc:

Sandra Johnson
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Cincinnati, Ohio 45211

James G. Beasley, Director
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RDK/laa
12/20

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