[Cite as ***Balthis v. Ohio Dept. of Transp.*****, 2008-Ohio-4189.]**

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

CYNTHIA L. BALTHIS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-09071-AD	- 2 -	MEMORANDUM DECISION

Case No. 2007-09071-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Cynthia L. Balthis, asserted she suffered property damage to her automobile windshield while traveling on Interstate 280 in Wood County on October 2, 2007, at approximately 9:30 a.m. Plaintiff stated, "I was driving north on 280 and was just under the Curtice Road Bridge when a rock came down off a construction vehicle and hit my windshield."

{¶ 2} 2) Plaintiff implied her property damage was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"). Consequently, plaintiff filed this complaint seeking to recover damages in the amount of $382.57, the cost of a replacement windshield. Plaintiff submitted the filing fee and requested reimbursement of that amount along with her damage claim.

{¶ 3} 3) Plaintiff submitted a written statement from Steve Martin, who was a passenger in plaintiff's car on October 2, 2007 and witnessed the damage occurrence.

Case No. 2007-09071-AD	- 3 -	MEMORANDUM DECISION

Martin pointed out he was a front seat passenger in plaintiff's vehicle and recalled, "[a]s we passed under the Curtice Road Bridge a rock or piece of concrete approximately 1.5 inches in diameter that was knocked from the Curtice Road Bridge that crosses over the freeway hit and caused extensive damage to the windshield." Martin noted that after the object struck the vehicle's windshield he looked back toward the bridge and saw DOT workers and DOT vehicles parked on the bridge. Martin expressed the opinion that the personnel on the Curtice Road Bridge were engaged in some sort of construction work. Martin offered that he believed the damage-causing object "fell from the bridge due to the construction taking place at the time."

{¶ 4} 4) Additionally, plaintiff submitted a written statement from Richard M. Craig, who was a passenger in back seat of her car on October 2, 2007. Craig recalled he saw a "large dark object falling down" and strike the windshield of plaintiff's automobile. After the described object hit the windshield, Craig stated he looked out the back window of plaintiff's car and "saw the transportation workers up on the bridge that we had just passed."

{¶ 5} 5) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of any defective condition associated with the Curtice Road Bridge or corresponding section of Interstate 280 in Wood County.

Case No. 2007-09071-AD	- 4 -	MEMORANDUM DECISION

Defendant maintained DOT records do not show any prior complaints or reports "of falling debris" before plaintiff's property damage incident. Defendant related plaintiff did not stop to notify the construction workers and make a report after the property damage occurrence forming the basis of this claim.

{¶ 6} 6) Defendant disputed the allegations that the damage-causing object emanated from the overpass bridge. Defendant acknowledged there is a DOT maintenance facility in the vicinity of the Curtice Road Bridge and therefore, it is a common occurrence for DOT trucks to be seen traveling in the area. Defendant also acknowledge, "ODOT did have trucks out doing Litter Patrol on October 2, 2007 at I-280 and Curtice Road." Defendant explained a private contractor, Miller Brothers, was "working in the area on the west side of the roadway and they did not have any complaints of rocks falling from their vehicles." Defendant contended plaintiff has failed to produce sufficient evidence to establish her property damage was caused by conduct on the part of DOT or a defective structure under DOT control or maintenance responsibility.

CONCLUSIONS OF LAW

{¶ 7} Defendant has the duty to maintain its highways in a reasonably safe

Case No. 2007-09071-AD	- 5 -	MEMORANDUM DECISION

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.

{¶ 8} In order to prove a breach of duty to maintain 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. 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, 577 N.E. 2d 458. 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, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861. Plaintiff and the passengers in her car have all stated

Case No. 2007-09071-AD	- 6 -	MEMORANDUM DECISION

the damage-causing debris emanated from activity under the control of DOT. All witnesses related plaintiff's property damage was either directly caused by DOT maintenance operations or a structure under the maintenance responsibility of DOT.

{¶ 9} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court finds the assertions of the witnesses to be persuasive in regard to the origin of the damage-causing debris.

{¶ 10} In order for plaintiff to prevail upon her 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 179, 472 N.E. 2d 707. Plaintiff insisted her property damage was proximately caused by defendant's personnel. As a necessary element of her particular claim, plaintiff was required to prove proximate cause of her damage by a preponderance of the evidence. See, e.g., *Stinson v. England* (1994), 69 Ohio St. 3d 451, 633 N.E. 2d 532. This court,

Case No. 2007-09071-AD	- 7 -	MEMORANDUM DECISION

as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶ 11} "If an 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 negligence. It is not necessary that the defendant should have anticipated the particular 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. 2 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 12} This court has previously held DOT liable for damage resulting from falling debris. *Elsey v. Dept. of Transportation* (1989), 89-05775; *Hedrick v. Ohio Department of Transportation* (2001), 2001-07131-AD. In the instant claim, plaintiff has offered sufficient evidence to prove her property damage was caused by a negligent act or omission on the part of defendant. *Brown v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2003-08070-AD, 2003-Ohio-5571; *Alfrey v. Dept. of Transp.*, Ct. of Cl. No. 2002-10160-AD, 2003-Ohio-1318. Defendant is liable to plaintiff for her property damage in the amount of $382.57, plus the $25.00 filing fee costs. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $407.57, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Cynthia Balthis
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RDK/laa
5/6
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