

[Cite as *Rupert v. Ohio Dept. of Transp., Dist. 11, 2008-Ohio-4192.*]

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

KAREN L. RUPERT, et al.

Plaintiffs

v.

OHIO DEPT. OF TRANSPORTATION, DISTRICT 11

Defendant

Case No. 2008-01294-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} Plaintiff, Karen L. Rupert, stated that she "was driving south on Route 7 - 1/4 mile before the Brilliant, Oh Exit," when large rocks rolled down the adjacent hillside onto the roadway area and into the path of the vehicle she was driving. Plaintiff, Karen L. Rupert, further stated that, "[t]he rocks hit my car (and) went under it causing heavy undercarriage damage (to the extent) where the car was unable to drive away (and) had to be towed (and) repaired." It was noted that the described incident occurred at approximately 7:15 a.m. on December 14, 2007. The damaged vehicle, a 2007 Chevrolet HHR is owned by plaintiff, James H. Rupert, Jr.

{¶ 2} The Chevrolet HHR that plaintiff, Karen L. Rupert was driving was one of four vehicles disabled in the southbound lane of State Route 7. All vehicles were apparently damaged from rock debris on the traveled portion of the roadway. Plaintiffs have implied that the damage to the Chevrolet HHR was proximately caused by negligence on the part of defendant, Department of Transportation (DOT) in failing to maintain the hillside area adjacent to the southbound lanes of State Route 7 in Jefferson County. Consequently, plaintiffs' have filed this complaint seeking to recover \$500.00, their insurance coverage deductible for automotive repair costs resulting from the December 14, 2007 incident. Plaintiffs' damage claim is limited by the provisions of R.C. 2743.02(D).¹ The filing fee was paid.

{¶ 3} Defendant denied liability in this matter based on the contention that no

¹ R.C. 2743.02(D) states in particular part:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.

DOT personnel had knowledge of any rock debris on the roadway prior to plaintiff's property damage event. Defendant has no record of receiving any calls or complaints about rock debris which DOT located near milepost 10.13 on State Route 7 in Jefferson County. Although local police were called to the scene on December 14, 2007, and investigated the incident, defendant denied receiving any contact from local police reporting rock debris on State Route 7. Defendant is unaware of the identity of the entity which cleared the rock debris from the roadway after the December 14, 2007 property damage occurrence. However, defendant pointed out that no DOT crews cleared the roadway of rock debris.

{¶ 4} Defendant asserted that plaintiffs have failed to produce evidence to establish the length of time the rock debris were present on the roadway prior to 7:15 a.m. on December 14, 2007. Defendant suggested, "it is more likely than not that the rock was in that location for only a short amount of time before the incident." Defendant denied that DOT acted negligently in performing roadway maintenance. Defendant observed that a rockwall barrier was constructed throughout this section of roadway to prevent or inhibit rocks from rolling down the adjacent hillside and onto the traveled portion of the roadway. Defendant submitted photographs depicting a section of the referenced concrete rockwall barrier.

{¶ 5} Plaintiffs filed a response stating that the particular section of State Route 7 "is known for rocks coming down." Plaintiffs report to date that rocks continue to roll down the hillside and onto the roadway. Plaintiffs did not submit evidence to show the length of time the rocks were present on the traveled portion of State Route 7 prior to 7:15 a.m. on December 14, 2007. Plaintiffs asserted that a police report regarding damage to vehicles from rock debris compiled at 7:24 a.m. on December 14, 2007 constitutes evidence that "debris was there (and) there were disabled vehicles from the cause of this rock slide." The police report does not contain any information concerning the length of time rocks were on the roadway prior to plaintiffs' damage occurrence.

{¶ 6} 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 facts of the instant claim do not establish defendant breached any duty in respect to roadway maintenance.

{¶ 7} Therefore, in order for plaintiffs to recover under a negligence theory they must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the rocky debris and failed to respond in a reasonable time or responded in a negligent manner. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Department of Transportation* (1985), 84-03278-AD. A breach of the duty to maintain the highways must be proven, by a preponderance of the evidence, showing 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. In the instant claim, plaintiffs have failed to prove defendant had requisite notice of the rock debris their vehicle struck. No facts have shown that defendant had actual or constructive notice of the rock fall which proximately caused plaintiffs' damage. See *Hanlin v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2004-10582-AD, 2005-Ohio-2040; *Clarke v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-02168-AD, 2005-Ohio-3240.

{¶ 8} In a general sense, both plaintiffs and DOT had notice of rock falls occurring on the portion of State Route 7 in question. However, plaintiffs have failed to prove by a preponderance of the evidence that defendant knew or should have known the particular rockslide which resulted in plaintiffs' property damage was likely to occur on December 14, 2007. Plaintiffs have failed to prove that the particular rock face from which the roadway debris originated showed any signs of instability before December 14, 2007. The precautionary and inhibiting measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public.

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Consequently, plaintiffs have failed to present any set of facts to invoke ensuing liability on DOT. See *Mosby v. Dept. of Transportation* (1999), 99-01047-AD.



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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 plaintiffs.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
4/8
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