

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

JOSEPH M. HICKS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-08329-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Joseph M. Hicks, stated he suffered property damage to his 2007 Hyundai Sonata while traveling north on Interstate 270 through a construction zone when the vehicle struck an overturned sign laying on the traveled portion of the roadway. Plaintiff recalled the damage incident occurred at approximately 2:30 a.m. on July 7, 2008, “just past the Route 161 exit between that and the Route 3 exit” on Interstate 270 in Franklin County. Plaintiff noted “[a] construction sign was tipped over and in the middle lane with no reflectors visible as it was on its side.” Apparently plaintiff drove over the downed sign which damaged the front bumper, right side mirror, and right side of the vehicle’s body.

{¶ 2} Plaintiff implied the damage to his vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway in a construction area free of hazardous conditions. Plaintiff filed this complaint seeking to recover damages of \$575.00 for expenses described as a deductible and lost wages. Plaintiff paid the \$25.00 filing fee and requested

reimbursement of that cost along with his damage claim.

{¶ 3} Defendant explained plaintiff's damage incident occurred between mileposts 28.71 to 30.52 on Interstate 270 in Franklin County on a roadway construction zone under the control of DOT contractor National Engineering and Contracting Company ("National"). Defendant asserted National, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued National is the proper party defendant in this action. Defendant implied all duties such as the duty to inspect, the duty to warn, and all maintenance duties were delegated when an independent contractor takes control over a particular section of roadway. 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. See *Cowell v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-09343-AD, jud, 2004-Ohio-151. Furthermore, despite defendant's contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with a duty 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. 00AP-1119.

{¶ 4} Alternatively, defendant denied neither DOT nor National had any knowledge of a downed sign on Interstate 270 prior to July 7, 2008. Defendant denied receiving any calls or complaints regarding a downed sign on the roadway prior to plaintiff's incident. Defendant asserted plaintiff did not produce any evidence to show that either DOT or National personnel displaced a sign on Interstate 270. Defendant submitted a statement from National representative, Jesse P.E. Dieter, who reported that no National crews were working on July 7, 2008 on Interstate 270. Furthermore, Dieter recorded National had not placed any signs on temporary supports along the roadway in the vicinity of plaintiff's described damage occurrence. Dieter also recorded National had "received no reports of any signs being in the road at that location." 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 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. There is no evidence either defendant or DOT agents created the downed sign condition that caused plaintiff's property damage.

{¶ 5} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused him injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that he 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. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶ 6} This court, as the 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. In the instant claim, plaintiff failed to produce sufficient evidence to determine the property damage claimed was caused by a sign that was negligently installed or inspected by defendant or its agents.

{¶ 7} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed or that the injury claimed was proximately caused by defendant's negligence. Plaintiff failed to show that the property damage was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Hills v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2006-07554-AD, 2007-Ohio-2679.

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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:

Joseph M. Hicks
58 Village Gate Blvd.
Delaware, Ohio 43015

James G. Beasley, Director
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RDK/laa
11/18

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