[Cite as *Stadtler v. Ohio Dept. of Transp.*, 2016-Ohio-7664.]

CARL STADTLER Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2016-00377-AD Clerk Mark H. Reed MEMORANDUM DECISION

{¶1} Plaintiff Carl Stadtler (hereinafter "plaintiff") filed a complaint against defendant Ohio Department of Transportation (hereinafter "ODOT") in which he alleges that his vehicle was damaged by a light pole. Plaintiff states that on May 31, 2015, at approximately 8:56 p.m., his son Bryan Stadtler was driving his 2004 Ford E350 Super Duty Cargo Van on I-77 South and as his son approached the SR 21 Granger Road exit, his son noticed a light pole starting to fall on his path. Plaintiff alleges that the light pole fell on top of the van completely caving in the rear left side of the van's roof, and the van was deemed unrepairable. Plaintiff seeks damages in the amount of $6,977.00, which reflects the 2015 Kelley Blue Book value. Plaintiff does not have insurance coverage for the damage to his vehicle.

{¶2} Defendant denies liability and appears to argue that it is not responsible for the damage to plaintiff's vehicle under two theories. First, defendant argues that the light pole that fell on plaintiff's car was hit by plaintiff's son or a third party prior to falling. ODOT claims that Bryan Krall, ODOT District 12 Lighting Manager, was the first person to respond after the incident and observed tire tracks going toward the light pole involved in the incident. (Investigation Report, Exhibit D). ODOT argues that "[t]here is no duty to control the conduct of a third person except in cases where there exists a special relationship between the defendant and either the plaintiff or the person whose conduct needs to be controlled." (Investigation Report, Pg. 3). ODOT claims that in this

case, plaintiff's damage was caused by an unknown motorist that displaced an object and no special relationship exists between the defendant and this unknown motorist.

{¶3} Second, defendant argues that it had no notice of a faulty light pole on IR 77 prior to the light pole falling, and that plaintiff failed to prove that ODOT maintains its highways negligently. ODOT states that its Cuyahoga County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times per month, including IR 77 which has an average daily traffic count of between 92,070 and 99,190 vehicles. ODOT also claims that a review of the six-month maintenance history for the area in question reveals that 147 maintenance operations were conducted on IR 77 in Cuyahoga County, including where in the incident happened in this case. (Investigation Report, Exhibit F). ODOT argues that if its personnel detected any defects they would have been promptly scheduled for repair.

{¶4} Exhibit C to ODOT's investigation report, the Traffic Crash Report, states in pertinent part, as follows: "As his vehicle approached RT21 while driving in the slow lane, the driver observed a light pole * * * on the right side of the freeway starting to fall into the path of his vehicle. The pole * * * landed on the top of [the van] causing damage to the driver side rear area. * * * [The van] did not stop and continued southbound dragging [the] pole on top of his vehicle. With doing so [the] pole was dragged into [another] pole causing damage to that pole." Plaintiff's son was found during the investigation.

{¶5} Plaintiff did not file a response to defendant's investigation report.

{¶6} With regard to defendant's argument that the light pole was hit by plaintiff's son or a third party based on tire tracks leading toward the pole seen by Bryan Krall, the court is not persuaded that plaintiff's son or another party hit the light pole prior to the pole falling. Exhibit 4 to plaintiff's complaint is a series of photographs of the damage to the van. None of the photographs show any damage to the front of the van, thus plaintiff's son likely did not hit the pole. Further, Exhibit C to ODOT's investigation

report reveals that plaintiff's son told the investigator that "at no time did his vehicle strike pole ICR #5 causing it to fall." Therefore, the court finds that plaintiff's son did not strike the pole that fell on the back of the van. Additionally, other than the statement from Bryan Krall, there is no other evidence to lead the court to believe that another vehicle struck the pole prior to the pole falling on plaintiff's van. As such, the court finds that another vehicle did not cause the pole to fall on plaintiff's van.

{¶7} Turning to defendant's argument that plaintiff failed to prove, by a preponderance of the evidence, that ODOT negligently maintained the roadway or that the light pole was faulty. 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 his injuries. *Armstrong v. Best Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶ 8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984). The state has a general duty to maintain its highways in a reasonably safe condition for the travelling public. *Sparre v. Ohio DOT*, 2013-Ohio-4153, 998 N.E.2d 883, ¶ 9 (10th Dist.); *Knickel v. Dept. of Transp.*, 49 Ohio App.2d 335, 361 N.E.2d 486 (10th Dist.1976). However, defendant is not an insurer of the safety of travelers on its highways. *Id.*; *see also Rhodus v. Ohio Dept. of Transp.*, 67 Ohio App.3d 723, 588 N.E.2d 864 (10th Dist.1990). ODOT, therefore, is not liable for damages caused by hazards on state highways unless ODOT had actual or constructive notice of the hazard that caused damage to plaintiff's van. *Id.*; *see also McClellan v. Ohio Dept. of Transp.*, 34 Ohio App. 3d 247, 249, 517 N.E.2d 1388 (10th Dist.1986).

{¶8} In order to prove a breach of the duty to maintain highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise conditions of which it has notice, but fails to reasonably correct. *Bussard v. Ohio Dept. of Transp.*, 31 Ohio Misc. 2d 1, 507 N.E. 2d 179 (Ct. of Cl. 1986).

There is no evidence that defendant had actual notice of any defect in the light post that fell on plaintiff's van.

{¶9} In the absence of actual notice, plaintiff may prove ODOT had constructive notice of the defect. "Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice." *Sparre*, 2013-Ohio-4153 at ¶ 23; *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-1052, 2010 Ohio 4736, ¶ 14. To support an inference of constructive notice, plaintiff may submit evidence to establish the length of time that a condition existed, and thereby show that the defendant should have acquired knowledge of its existence. *Id.*; *see also Presley v. Norwood*, 36 Ohio St. 2d 29, 31, 303 N.E.2d 81 (1973).

{¶10} Plaintiff has not provided any evidence by which the court can infer that defendant had constructive notice that the light pole that fell on plaintiff's vehicle was faulty. First, the section of roadway where plaintiff's van was damaged has an average daily traffic count of between 92,070 and 99,190 vehicles. Despite this volume of traffic, defendant received no complaints of a faulty light pole. Second, Exhibit F of defendant's investigation report shows that within the past six months there were one hundred forty-seven (147) maintenance operations conduction on IR 77 in Cuyahoga County inclusive of the area where plaintiff's car was damaged. If any issue with the light pole was present for any appreciable length of time, it is probable that it would have been discovered by ODOT's work crews.

{¶11} Since plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

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CARL STADTLER Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2016-00377-AD Clerk Mark H. Reed 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 shall be absorbed by the Court.

MARK H. REED
Clerk

Entry cc:

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