

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

DAVID J. SZYMANSKI

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-04871-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On February 3, 2008 at approximately 10:00 p.m., Ashley N. Szymanski was driving a 2005 Hyundai Accent south on State Route 4 in Butler County when the vehicle struck a large rock laying in the roadway. The rock debris caused substantial damage to the Hyundai Accent, owned by plaintiff, Daniel J. Szymanski. The damage-causing rock debris had apparently fallen from an adjacent hillside onto the southbound lane of State Route 4.

{¶ 2} Plaintiff asserted the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to maintain State Route 4 free of rock debris. Plaintiff filed this complaint seeking to recover damages in the amount of \$463.07, representing the total cost of automotive repair he incurred. The filing fee was paid.

{¶ 3} Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge about rock debris on State Route 4 prior to the February 3, 2008 property damage occurrence. Defendant denied receiving any prior complaints about the damage-causing rock debris which DOT located at milepost 18.00

on State Route 4 in Butler County. Defendant explained DOT work crews performed maintenance activities in the vicinity of plaintiff's damage incident on January 25, 2008 and again on January 30, 2008. No rock debris was discovered on the roadway during these activities. 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 asserted no evidence has been presented to establish DOT had any notice of rock debris on State Route 4 prior to February 3, 2008.

{¶ 4} 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.

{¶ 5} 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 conditions 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.

{¶ 6} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular rock debris was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the rock debris. Additionally, the trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time that the debris appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication that defendant had constructive notice of the rock debris. Plaintiff has not produced any evidence to infer that defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Plaintiff has failed to prove defendant breached any duty of care owed to him and has failed to present any set of facts to invoke liability

on the part of DOT. See *Mosby v. Dept. of Transp.* (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 plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

8/19

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