

IN THE COURT OF CLAIMS OF OHIO

|                         |   |                        |
|-------------------------|---|------------------------|
| NANNIE M. TURNER        | : |                        |
| 14214 Darwin Avenue     | : |                        |
| Cleveland, Ohio 44110   | : | Case No. 2002-01144-AD |
| Plaintiff               | : | MEMORANDUM DECISION    |
| v.                      | : |                        |
| DEPT. OF TRANSPORTATION | : |                        |
| Defendant               | : |                        |

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director  
 Department of Transportation  
 1980 West Broad Street  
 Columbus, Ohio 43223  
 : : : : : : : : : : : : : : :

THE COURT FINDS THAT:

{¶1} 1) On December 15, 2001, plaintiff, Nannie M. Turner, was traveling on Interstate 90 in Cuyahoga County, when her automobile struck a car bumper laying on the traveled portion of the roadway. Plaintiff stated her automobile body was damaged as a result of striking the debris;

{¶2} 2) Plaintiff filed this complaint seeking to recover \$521.00, the cost of repairing her automobile. Plaintiff asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. On January 18, 2002, plaintiff submitted the filing fee;

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the debris prior to plaintiff's incident;

{¶4} 4) On May 13, 2002, plaintiff submitted a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the car bumper debris were on the roadway surface prior to plaintiff's property damage occurrence.

{¶5} THE COURT CONCLUDES THAT:

{¶6} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD;

{¶7} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD;

{¶8} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD;

{¶9} 4) There is no evidence defendant had actual notice of the damage-causing debris condition;

{¶10} 5) 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 debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262;

{¶11} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD;

{¶12} 7) No evidence has shown defendant had constructive notice of the damage-causing debris;

{¶13} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

{¶14} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶17} 2) The court shall absorb the court costs in this case in excess of the filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
5/28  
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