

[Cite as *Lyons v. Ohio Dept. of Transp.*, 2006-Ohio-7160.]

IN THE COURT OF CLAIMS OF OHIO

SANDRA C. LYONS	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01190-AD
DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On December 17, 2005, at approximately 9:30 a.m., plaintiff, Sandra C. Lyons, was traveling west on State Route 98, "just outside Bucyrus city limits," when her truck hit an uprooted road reflector protruding up from the roadway surface. The reflector damaged the tire of plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$141.73 for a replacement tire and related expenses, plus \$25.00 for filing fee reimbursement. Plaintiff asserted she sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff suggested the reflector may have been uprooted by snow plowing activities conducted by defendant prior to December 17, 2005. Plaintiff submitted photographs of her damaged tire, the damage-causing road reflector, and the roadway area where the incident occurred.

{¶ 3} 3) Defendant denied having any knowledge of the dislodged damage-causing reflector prior to plaintiff's property damage occurrence which defendant located at "milepost 9.0 on SR 98 in Crawford County."

{¶ 4} 4) Plaintiff failed to produce evidence showing the length of time the broken reflector existed on the roadway prior to the December 17, 2005, incident.<sup>1</sup> Although plaintiff surmised the reflector may have been uprooted by defendant's snow plowing operations, no evidence has been produced to establish the reflector was dislodged by activities conducted by defendant.

#### CONCLUSIONS OF LAW

{¶ 5} Defendant has the duty to keep the roads in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶ 7} Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was

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<sup>1</sup> Plaintiff filed a response.

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 this case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm* (1945), 145 Ohio St. 198, approved and followed.

{¶ 8} Ordinarily, a claim involving damages caused by broken road reflector, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition (broken reflector) 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} 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.

{¶ 10} Plaintiff has not produced any evidence to indicate the length of time the damage-causing reflector was present on the roadway prior to the incident forming the basis of this claim. no evidence has been submitted to show defendant had actual notice of the reflector's condition. 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 the defective condition (reflector) appeared. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d

262. There is no indication defendant had constructive notice of the reflector's condition. Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the reflector to become dislodged. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶ 11} Plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

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Plaintiff :

v. :

CASE NO. 2006-01190-AD

DEPARTMENT OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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3/29

Filed 4/5/06

Sent to S.C. reporter 5/4/06