

[Cite as Hill v. Ohio Dept. of Transp., 2002-Ohio-6536.]

IN THE COURT OF CLAIMS OF OHIO

KATIE M. HILL	:	
805 S. Main Street	:	
Ada, Ohio 45810	:	Case No. 2002-07037-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
Defendant	:	
	:	: : : : : : : : : : : : : : : :

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

FINDINGS OF FACT

{¶1} On July 16, 2002, plaintiff, Katie M. Hill, drove from Ada, Ohio to Columbus, Ohio, between the hours of 11:00 a.m. and 12:30 p.m. Plaintiff indicated she traveled on State Route 23 and Polaris Parkway on her trip to Columbus. Plaintiff asserted that at sometime on her trip her automobile received paint damage. Plaintiff suggested there was wet paint on a roadway surface at some point between Ada and Columbus. Plaintiff related she did not notice any warning signs regarding roadway painting activity. Plaintiff could not identify the general or specific highway location where her car was damaged.

{¶2} Plaintiff filed this complaint alleging defendant, Department of Transportation, was responsible for the paint damage to her vehicle. Plaintiff seeks recovery in the amount of \$139.92 for automotive repair involving paint removal. Plaintiff submitted

the filing fee with the complaint.

{¶3} Defendant has denied liability in this matter. Defendant has argued plaintiff failed to produce sufficient evidence to establish her damage was caused by any conduct of personnel affiliated with the Department of Transportation. Defendant has asserted plaintiff has not submitted adequate proof to show her car was damaged as a result of painting activity on roadways under the Department's jurisdiction.

CONCLUSIONS OF LAW

{¶4} 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. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶5} 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. However, defendant is not an insurer of the safety 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} Plaintiff has the burden of proof to show her property damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant's agents.

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

{¶8} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

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