

[Cite as *Proudfoot v. Ohio Dept. of Transp.*, 2006-Ohio-7141.]

IN THE COURT OF CLAIMS OF OHIO

JOSHUA PROUDFOOT :
Plaintiff :
v. : CASE NO. 2005-10608-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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

{¶ 1} On October 8, 2005, plaintiff, Joshua Proudfoot, was traveling south on Interstate 77 in Stone Creek in Tuscarawas County, when his automobile struck rock and mud debris on the roadway. The rock and mud debris was actually a mudslide condition which had come from a hillside adjacent to Interstate 77. As a result of striking the mud and rock debris, plaintiff's car, a 1996 Pontiac Sunfire, was totaled. Consequently, plaintiff filed this complaint seeking to recover \$2,500.00, the statutory maximum award amount in a claim of this type. Plaintiff stated the value of his totally destroyed vehicle was \$2,500.00. Plaintiff asserted defendant, Department of Transportation ("DOT"), should bear liability for his property damage. Plaintiff implied his damage was proximately caused by negligence on the part of DOT in failing to warn motorists of a rock or mudslide in the particular roadway area or in preventing such hazardous occurrences. The filing fee was paid.

{¶ 2} Defendant denied any liability in this matter based on

the contention DOT personnel did not have any knowledge about rock and mud debris on Interstate 77 prior to the October 8, 2005, property damage occurrence. Defendant located this damage occurrence at about milepost 73.40 on Interstate 77 in Tuscarawas County. Defendant related no records of complaints concerning mud and rock debris on the roadway were received prior to October 8, 2005. Furthermore, defendant explained periodic litter patrol operations were conducted in the area and no problems were discovered. Defendant suggested the rock and mud debris probably existed on the particular area of Interstate 77 for "only a relatively short amount of time before," the incident involving plaintiff. Defendant denied acting negligently in respect to roadway maintenance. Furthermore, defendant explained "Falling Rock" signs were positioned on the roadway shoulder in the general area of plaintiff's property damage occurrence to warn motorists of possible roadway danger.

{¶ 3} 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. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Gael v. State* (1979), 77-0805-AD. The facts of the instant claim do not establish defendant breached any duty in respect to signage or roadway maintenance.

{¶ 4} Therefore, in order for plaintiff to recover under a negligence theory he must prove, by a preponderance of the evidence, defendant had actual or constructive notice of the rocky debris and failed to respond in a reasonable time or responded in a negligent manner. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Department of Transportation* (1985), 84-03278-AD. A breach of the duty to maintain the highways must be proven, by a preponderance of the evidence, showing 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. In the instant claim, plaintiff has failed to prove defendant had requisite notice of the rock debris his vehicle struck. No facts have shown defendant had actual or constructive notice of the rock fall which proximately caused plaintiff's damage.

{¶ 5} Both plaintiff and DOT in a general sense, had notice of rock falls occurring on the portion of Interstate 77 in question. However, plaintiff has failed to prove, by a preponderance of the evidence, that defendant knew or should have known the particular rockslide which resulted in plaintiff's property damage was likely to occur on October 8, 2005. Plaintiff has failed to prove the particular rock face from which the roadway debris originated showed any signs of instability before October 8, 2005. The precautionary, inhibiting, and inspecting measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public. Consequently, plaintiff has failed to present

any set of facts to invoke ensuing liability on DOT. See *Mosby v. Dept. of Transportation* (1999), 99-01047-AD.

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DEPARTMENT OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa

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