

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

SANDRA SMITH

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-07155-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶1} On November 9, 2006, plaintiff, Sandra Smith, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on October 25, 2006, at approximately 6:45 a.m., she was traveling southbound on Interstate 75 at Exit 51, Edwin C. Moses Blvd., when a vehicle traveling on her right side struck a pothole propelling debris into her vehicle. The front bumper of plaintiff's vehicle was damaged and the car required a wheel alignment as the result of the incident. Plaintiff asserts damage to her vehicle was the result of negligence on the part of defendant and seeks damages in the amount of \$1,101.71.

{¶2} On November 28, 2006, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶3} "Defendant asserts it is not responsible for the maintenance of the southbound Interstate 75 at Exit 51 within the City of Dayton, On October 14, 2005, the Ohio Department of Transportation entered into a an [sic] Interstate Lane Mile and Maintenance Agreement with the City of Dayton for maintenance services (See Exhibit A and map).

{¶4} "Defendant asserts that pursuant to the agreement between the Ohio Department of Transportation and the City of Dayton, the City of Dayton, and not the defendant, is responsible for maintaining the roadway upon which plaintiff's incident

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occurred, that being the Interstate 75 at Exit 51, within the City of Dayton.”

{¶15} The Interstate Lane Mile and Maintenance Agreement in pertinent part states:

{¶16} “In the interest of public safety and convenience, it is the desire of the parties that the CITY shall perform routine maintenance and lighting maintenance upon the interstate highways within the CITY using its own labor forces, equipment and materials, or by contracting for these items, with reimbursement from the STATE.

{¶17} “Routine Maintenance means the act of preserving and keeping each type of roadway, roadside, structure, or facility, within the right-of-way as nearly as practicable in its original condition as constructed or as subsequently improved. Routine maintenance shall include but shall not be limited to: crack sealing, pothole patching, pavement repairs to include partial and limited full depth repair, pavement markings, sign replacement and repair, mowing, herbicidal spraying, on-going landscape maintenance, street sweeping, litter pickup, snow and ice control, minor drainage repairs as determined by ODOT, catch basin cleaning, guardrail repair, and fence repair and other like works agreed upon by the parties.

{¶18} “This Agreement shall commence on July 1, 2005 and shall terminate on June 30, 2007.

{¶19} “The STATE shall not be liable for injury to person or damage to property arising out of the CITY’s performance of routine, extraordinary, or lighting maintenance.”

{¶10} Defendant is not responsible for the maintenance of the roadway at the site of the plaintiff’s damage-causing incident. Consequently, plaintiff’s case is dismissed.

{¶11} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case in excess of the filing fee. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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1/9
Filed 1/30/07
Sent to S.C. reporter 3/16/07