

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

YOLANDA JONES-JOHNSON,	:	APPEAL NO. C-090409
Plaintiff-Appellant,	:	TRIAL NO. A-0707841
vs.	:	<i>JUDGMENT ENTRY.</i>
GRAY ROAD FILL, INC.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant, Yolanda Jones-Johnson, appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendant-appellee, Gray Road Fill, Inc., in a personal-injury action.

Jones-Johnson drove a dump truck for the city of Cincinnati. One morning she drove to the premises of Gray Road, which operated a landfill. As she was driving on Gray Road’s property, she hit something in the roadway. She testified that her truck had bounced with such force that she had sustained injuries when her head struck the roof.

When questioned about what she had hit, Jones-Johnson testified in her deposition that “I hit the depression or hole in the ground. I don’t know what it was. But I know it was either a—I don’t know. It was—it was something.” Similarly, when

asked if the defect was a pothole, she replied, “I don’t know that. Impression, pothole. I can’t remember. That was three years ago.” And when asked to mark on an exhibit where her injuries had occurred, Jones-Johnson responded, “I couldn’t say that.”

Gray Road filed a motion for summary judgment, and the trial court granted its motion.

In a single assignment of error, Jones-Johnson now argues that the trial court erred in granting summary judgment in favor of Gray Road.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party.<sup>2</sup> This court reviews the granting of summary judgment de novo.<sup>3</sup>

To recover on a claim of negligence, the plaintiff must prove that the defendant owed the plaintiff a duty, that the defendant breached that duty, and that the breach of the duty proximately caused the plaintiff’s injury.<sup>4</sup>

In this case, the parties disputed the nature of the duty that Gray Road owed to Jones-Johnson. But because Jones-Johnson failed to demonstrate the proximate cause of her injuries, we need not determine the specific duty that applied.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

<sup>3</sup> *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶6.

<sup>4</sup> *Wellman v. E. Ohio Gas Co.* (1953), 160 Ohio St. 103, 113 N.E.2d 629, paragraph three of the syllabus.

To demonstrate proximate cause in a case involving a defect on property, a plaintiff must identify the specific defect that allegedly caused her injuries.<sup>5</sup> For instance, this court has held that it was insufficient for a plaintiff to merely state that her injuries had been caused by a hole in the concrete; she had to state specifically which hole had caused the injuries.<sup>6</sup>

Here, Jones-Johnson was unable to specifically identify the defect that had allegedly caused her injuries. The most that she was able to say was that her injury had been caused by a depression in the roadway. She was unable to describe the characteristics of the depression, and she was unable to identify its location. Accordingly, she failed to demonstrate that any act or omission on the part of Gray Road had proximately caused her injuries, and the trial court's entry of summary judgment was proper.

We overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on February 24, 2010  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>5</sup> See, e.g., *Primm v. Cincinnati*, 1st Dist. No. C-070450, 2008-Ohio-1273, ¶¶15-16.

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<sup>6</sup> Id.