

[Cite as *Shank v. Dept. of Transp.*, 2005-Ohio-2050.]

IN THE COURT OF CLAIMS OF OHIO

DANNY SHANK :  
Plaintiff :  
v. : CASE NO. 2005-01633-AD  
DEPT. OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶1} On December 19, 2004, plaintiff, Danny Shank, was traveling east on State Route 87 at milepost 7.0 in Geauga County, when his vehicle struck an uprooted road reflector laying on the traveled portion of the roadway. Plaintiff stated the tire of his vehicle was damaged as a result of striking the reflector.

{¶2} Plaintiff filed this complaint seeking to recover \$364.08, his expense incurred for replacing his tire. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff paid the requisite material filing fee.

{¶3} Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶4} Plaintiff has not submitted any evidence to indicate the length of time the loosened road reflector was on the roadway surface prior to the December 19, 2004, property damage occurrence.

CONCLUSIONS OF LAW

{¶5} Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 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.

{¶7} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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.

{¶8} There is no evidence defendant had actual notice of the damage-causing reflector.

{¶9} 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 on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (loosened reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶11} No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶12} Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

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Plaintiff :

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CASE NO. 2005-01633-AD

DEPT. 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Danny Shank  
1149 SR 307 West  
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Plaintiff, Pro se

Gordon Proctor, Director  
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For Defendant

Case No. 2005-01633-AD

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MEMORANDUM DECISION

Sent to S.C. reporter 4/29/05