

the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. Plaintiff submitted photographs depicting the damage-causing pothole on US Route 33.

{¶ 3} 3) Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant suggested the pothole plaintiff's car struck probably existed, "for only a relatively short amount of time before plaintiff's incident." Defendant denied receiving any prior complaints about the pothole which DOT located at, "milepost 20.70 on US 33 in Athens County."

{¶ 4} 4) Defendant has asserted maintenance records show one pothole patching operation was needed in the general vicinity of plaintiff's incident during the six-month period prior to the February 10, 2004, property damage event.

{¶ 5} 5) Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

{¶ 6} 6) Despite filing a response, plaintiff did not submit any evidence to establish the length of time the pothole existed prior to his damage occurrence. Plaintiff pointed out defendant had knowledge of a pothole problem on US Route 33 in Athens County since DOT records show potholes were patched in the particular vicinity of plaintiff's incident on January 23, 2003 and patching occurred in the general vicinity on February 2, 2004 and February 10, 2004. Plaintiff stated defendant, "knew or should have known about the potential hazard on US 33 in Athens County, Ohio based on [DOT's] own records." Additionally, plaintiff argued DOT had to have known about the pothole due to the fact DOT personnel

conducted pothole patching on US Route 33 on January 23, 2004, February 2, 2004, and February 10, 2004. Records show patching was performed at various locations between milepost 5.00 and milepost 29.10 on these three occasions. Plaintiff's incident occurred at about milepost 20.7 on US Route 33. Plaintiff explained DOT repaired the pothole his car struck on February 10, 2004, the same day the incident forming the basis of this claim occurred. Plaintiff therefore reasoned, "[d]efendant had to have prior knowledge (of the pothole) in order to schedule a crew to this particular area." Plaintiff related he contacted DOT on February 10, 2004, advising defendant about the pothole his vehicle struck.

CONCLUSIONS OF LAW

{¶ 7} 1) 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.

{¶ 8} 2) In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that 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. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶ 9} 3) There is no evidence defendant had actual notice of the damage-causing pothole.

{¶ 10} 4) 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 (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d

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:

James F. Swatzel
14453 Shade Road
Shade, Ohio 45776

Plaintiff, Pro se

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

For Defendant

RDK/laa
6/9
Filed 6/17/05
Sent to S.C. reporter 7/8/05