

[Cite as *Richards v. Ohio Dept. of Transp.*, 2005-Ohio-4317.]

JASON C. RICHARDS :
Plaintiff :
v. : CASE NO. 2005-03288-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) On February 13, 2005, at approximately 8:10 p.m., plaintiff, Jason C. Richards, was traveling north on State Route 44 near milepost 6.5 in Geauga County, when his automobile struck a massive pothole causing substantial damage to the vehicle. Plaintiff estimated the size of the pothole his car struck at about one foot in width, two feet long, and about six inches in depth.

{¶ 2} 2) Plaintiff filed ths complaint seeking to recover \$500.00, his insurance coverage deductible for automotive repair expenses incurred resulting from the February 13, 2005, incident. Plaintiff contended he suffered the property damage claimed as a proximate cause of negligence on the part of defendant, Department of Transportation ("DOT") in negligently maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the assertion DOT personnel did not have any knowledge of the particular pothole on State Route 44 prior to plaintiff's property damage occurrence. Defendant suggested the damage-causing pothole likely was formed a relatively short period of time before the February 13, 2005, incident. Defendant denied receiving any calls or complaints or being notified in any way about the pothole in question. Defendant

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

{¶ 4} 4) Despite filing a response, plaintiff did not offer evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim. Plaintiff submitted photographs of his property damage and the pothole his vehicle struck. The photographs of the pothole depict a large defect.

CONCLUSIONS OF LAW

{¶ 5} Defendant has the duty to maintain its highway 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.

{¶ 6} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the pothole 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. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct.

{¶ 7} Plaintiff has not produced evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown

defendant had actual notice of the pothole for a sufficient length of time to invoke liability. Additionally, 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 pothole appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

IN THE COURT OF CLAIMS OF OHIO

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|------------------------------|---|--------------------------------|
| JASON C. RICHARDS | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2005-03288-AD |
| DEPARTMENT OF TRANSPORTATION | : | <u>ENTRY OF ADMINISTRATIVE</u> |
| Defendant | : | <u>DETERMINATION</u> |

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

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:

Jason C. Richards
152 Solon Road
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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

RDK/laa
7/7
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