

[Cite as *Miller v. Ohio Dept. of Transp.*, 2005-Ohio-5384.]

IN THE COURT OF CLAIMS OF OHIO

ELDON G. MILLER, JR., et al. :
Plaintiffs :
v. : CASE NO. 2005-03547-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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

FINDINGS OF FACT

{¶ 1} On January 5, 2005, at approximately 11:15 a.m., plaintiff, Eldon G. Miller, Jr., was traveling west on Interstate 70 at about mile marker 38.7 in Montgomery County, when the automobile he was driving struck a pothole causing tire and rim damage to the vehicle.

{¶ 2} Plaintiff, James Miller, Eldon G. Miller, Jr.'s grandson, is the owner of the vehicle which was damaged by the pothole on January 5, 2005. James Miller was a passenger in the automobile at the time of the incident forming the basis of this claim. Eldon G. Miller, Jr. related he was driving his grandson to work at the Dayton International Airport when the car he was driving struck the pothole on Interstate 70.

{¶ 3} James Miller filed this complaint seeking to recover \$593.65, representing repair expenses, costs for a replacement tire and rim, and a claim for work loss resulting from striking the pothole on Interstate 70. Plaintiff Eldon G. Miller, Jr. paid the \$25.00 filing fee. Plaintiffs' alleged all expenses incurred were proximately caused by negligence on the part of defendant,

Department of Transportation ("DOT"), in maintaining the roadway.

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{¶ 4} Plaintiffs asserted the damage-causing pothole was a previously repaired roadway defect which had deteriorated, creating a new hazardous condition. Plaintiffs related the newly formed pothole was repatched about 2:00 p.m. on January 5, 2005.

{¶ 5} Defendant denied liability based on the contention no DOT personnel had any knowledge of the pothole prior to the incident forming the basis of this claim. Defendant denied receiving any calls or complaints about the pothole before the incident regarding the damage to James Miller's vehicle. Defendant submitted a document from DOT District 7 Highway Management Administrator, Thomas M. Rossman who noted District 7 employee identified as Steve Clendening, receiving a phone call about the pothole on Interstate 70 from the Huber Heights Police Department. According to Rossman through Clendening, Huber Heights police report the Interstate 70 (milepost 38.7) pothole "at 7:25 a.m. on 1/05/02." The trier of fact shall presume the referenced date of "1/05/02" was intended to be noted at 1/05/05, when reading the Rossman document in its entirety.

{¶ 6} Defendant suggested the damage-causing pothole probably "existed in that location for only a relatively short amount of time before the time of the incident." On January 5, 2005, defendant dispatched work crews to patch potholes on Interstate 70. The pothole at milepost 38.7 on Interstate 70 was repaired on January 5, 2005, after plaintiff's property damage event.

{¶ 7} Defendant explained DOT personnel conduct roadway inspections on a routine basis, once or twice a month, and do not neglect repairing noticed roadway defects. Defendant related Interstate 70 "was in good condition at the time and in the general vicinity" of milepost 38.7. Defendant did not submit a maintenance

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{¶ 8} record for that particular portion of Interstate 70. Defendant professed plaintiffs did not present evidence to prove DOT breached any duty of care owed to the traveling public.

{¶ 9} Plaintiffs did not present any evidence to indicate the length of time the damage-causing pothole existed prior to the January 5, 2005, incident which occurred around 11:15 a.m. Defendant acknowledged receiving actual notice of the pothole at approximately 7:25 a.m. on January 5, 2005.

CONCLUSIONS OF LAW

{¶ 10} 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. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiffs prove, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiffs' damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 11} 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.

{¶ 12} To establish a breach of duty to maintain the highways, plaintiffs 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 incident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for

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{¶ 13} roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. Based on the rationale of *McClellan*, supra, defendant is liable for all damages claimed. Evidence has shown DOT had actual notice of the damage-causing pothole and failed to respond in a reasonable time after receiving this notice.

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Plaintiffs	:	
v.	:	CASE NO. 2005-03547-AD
DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>
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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 plaintiff James Miller in the amount of \$593.65 and plaintiff Eldon G. Miller, Jr. in the amount of \$25.00. Court costs are assessed against defendant. 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:

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For Defendant

RDK/laa
9/8
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