[Cite as *Miller v. Ohio Dept. of Transp.*, 2005-Ohio-4325.]

IN THE COURT OF CLAIMS OF OHIO

REBECCA H. MILLER	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05965-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On March 4, 2005, at approximately 8:15 a.m., plaintiff, Rebecca H. Miller, was traveling, "on I-76/224 eastbound at the SR 57 eastbound onramp," [sic] when her automobile struck a series of potholes causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover $256.03, for replacement tires, a cost plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing potholes prior to plaintiff's incident. Defendant suggested the potholes plaintiff's vehicle struck probably existed "for only a relatively short amount of time before plaintiff's incident." Defendant denied receiving any prior complaints about the potholes which DOT located at "milepost 3.24 on SR 57 in Medina County."

{¶ 4} 4) Plaintiff did not submit any evidence to establish the length of time the potholes existed prior to the March 4, 2005,

property damage event. Plaintiff explained DOT placed a "Rough Road" sign, "less than 1/4 mile east of where I had the tire blowouts." Plaintiff professed this advisory sign and other signs had been posted since "late winter" and were in place "long before my incident occurred." Plaintiff seemingly contended the posted signs should serve as evidence that DOT had knowledge of the damage-causing potholes in the roadway.[1]

{¶ 5} 5) Furthermore, defendant asserted 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 argued, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

CONCLUSIONS OF LAW

{¶ 6} 1) 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 plaintiff proves, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 7} 2) 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} 3) In order to prove a breach of duty to maintain the

[1] Plaintiff filed a response.

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. 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 developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 9} 4) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD. Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set-time standard for the discovery of certain road hazards." *Bussard*, supra at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb. 4, 1993), Franklin App. No. 92AP-1183.

{¶ 10} 5) Plaintiff has not produced any evidence to indicate the length of time the potholes were present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the potholes.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 potholes appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d

262. There is no indication defendant had constructive notice of the potholes. 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 conditions. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from potholes.

IN THE COURT OF CLAIMS OF OHIO

REBECCA H. MILLER	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05965-AD
OHIO DEPARTMENT 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

DRB/RDK/laa
7/18
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