

[Cite as *Jonas v. Ohio Dept. of Transp., Dist. 10, 2005-Ohio-4862.*]

IN THE COURT OF CLAIMS OF OHIO

ROBIN S. JONAS :
 :
 Plaintiff :
 :
 v. : CASE NO. 2005-06643-AD
 :
 OHIO DEPT. OF TRANSPORTATION, : MEMORANDUM DECISION
 DISTRICT 10 :
 :
 Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) On March 28, 2005, at approximately 7:15 p.m., plaintiff, Robin S. Jonas, was traveling east on US Route 50, "right outside little Hocking," when her automobile struck a large pothole causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$229.65, her total cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 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 4.04 on US 50 in Washington County."

{¶ 4} 4) Plaintiff did not submit any evidence to establish the length of time the pothole existed prior to the March 28, 2005,

property damage event.

{¶ 5} 5) Furthermore, defendant explained a DOT employee conducted a roadway inspection of US Route 50 on March 25, 2005, and did not detect any roadway defects. 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.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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 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.

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

{¶ 9} 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 262.

{¶ 10} 5) 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.

Entry cc:

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RDK/laa
8/18
Filed 8/30/05
Sent to S.C. reporter 9/14/05