

Defendant explained DOT employees conduct roadway inspections, "at least two times a month." Apparently no potholes were discovered during previous roadway inspections. Defendant suggested the pothole likely, "existed for only a short time before the incident," forming the basis of this claim. Defendant denied DOT employees were negligent in regard to roadway maintenance.

{¶ 5} 5) In his response to defendant's investigation report, plaintiff noted he drove over multiple potholes on the Interstate 71 exit ramp on April 25, 2005, and did not suffer any apparent damage to his car. Plaintiff seemingly implied one of the potholes his car struck on April 25, 2005, was the same pothole which damaged his vehicle on May 3, 2005. Defendant did not submit any record of conducting pothole patching operations on the Interstate 71 exit ramp between April 25, 2005, and May 3, 2005. Plaintiff related the ramp was repaved at sometime before June 7, 2005.

CONCLUSIONS OF LAW

{¶ 6} 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} 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.

{¶ 8} Plaintiff as not produced sufficient evidence to indicate the length of time the particular pothole was present on the

parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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