

[Cite as *Tiranno v. Ohio Dept. of Transp.*, 2005-Ohio-6279.]

IN THE COURT OF CLAIMS OF OHIO

REBECCA L. TIRANNO :
Plaintiff :
v. : CASE NO. 2005-07364-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On or about March 31, 2005, at approximately 8:30 a.m., plaintiff, Rebecca L. Tiranno, was traveling west on State Route 261 "in Wadsworth between Hartman Rd and Interstate 76," when her automobile struck a large pothole causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$382.81, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant denied receiving any complaints of a pothole located on State Route 261 "between mileposts .5 and 2.0 in Medina County."

{¶ 4} 4) Plaintiff did not provide sufficient evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim. Plaintiff insisted

defendant should have known about the particular damage-causing pothole since State Route 261 was in horrible condition with many deep potholes. Despite filing a response, plaintiff did not submit evidence to establish prior notice on the part of defendant.

{¶ 5} 5) Furthermore, defendant explained 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 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 duty to maintain 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} 3) 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.*, Court of Claims No. 90-05881, 1992-Ohio-264, affirmed (Feb. 4, 1993), Franklin App. No. 92AP-1183.

{¶ 9}4) Plaintiff has not produced any evidence to indicate the length of time the pothole was 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 pothole. 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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REBECCA L. TIRANNO	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07364-AD
OHIO DEPT. 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 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:

Rebecca L. Tiranno
132 Bay Hill Drive
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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

RDK/laa
10/21
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