

[Cite as *Locher v. Ohio Dept. of Transp.*, 2005-Ohio-7096.]

IN THE COURT OF CLAIMS OF OHIO

RODGER BLAIR LOCHER :
Plaintiff :
v. : CASE NO. 2005-08476-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On June 26, 2005, at approximately 6:00 p.m., plaintiff, Rodger B. Locher, was traveling west on US Route 322 near milepost 16.3 in Cuyahoga County, when his automobile ran over "a steel water drain cover" laying on the roadway. The drain cover ripped through the transmission pan of plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$231.40, the cost of automotive repair resulting from the June 26, 2005, incident. Plaintiff contends he incurred these damages 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 drain cover prior to plaintiff's incident. Defendant suggested the drain cover plaintiff's car struck probably existed "for only a short time before the incident." Defendant denied any prior complaints about the drain cover condition.

{¶ 4} 4) Plaintiff did not submit any evidence to establish the

length of time the condition existed prior to the June 26, 2005, property damage event.

{¶ 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} 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 recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the condition and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. 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 has not produced any evidence to indicate the length of time the drain cover condition was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the condition of the drain cover. 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 defective

condition appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the condition of the drain cover. 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 drain cover.

{¶ 9} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing condition was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

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RODGER BLAIR LOCHER	:	
Plaintiff	:	
v.	:	CASE NO. 2005-08476-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:

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Plaintiff, Pro se

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For Defendant

RDK/laa
11/30
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