

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

KATHY ROBERSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-01531-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} “1) On May 9, 2008, at approximately 2:45 p.m., plaintiff, Kathy Roberson, was traveling west on Interstate 70 near milemarker 112 in Fairfield County, when her 2007 BMW 335 struck a large pothole causing tire damage to the vehicle.

{¶ 2} “2) Plaintiff asserted the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (ODOT), in failing to maintain the roadway free of defects such as potholes. Plaintiff filed this complaint seeking to recover damages in the amount of \$670.67, the cost of replacement parts. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 3} “3) Defendant denied liability in this matter based on the contention that no ODOT personnel had any knowledge of the pothole prior to plaintiff’s property damage event. Defendant denied receiving any previous reports of the damage-causing pothole which ODOT located at milepost 112.0 on Interstate 70 in Fairfield County. Defendant suggested that, “it is more likely than not that the pothole existed in

that location for only a relatively short time before plaintiff's incident." Defendant asserted that plaintiff did not produce any evidence to establish the length of time the particular pothole existed at milepost 112.0 on Interstate 70 prior to 2:45 p.m. on May 9, 2008.

{¶ 4} "4) Furthermore, defendant asserted that plaintiff has not produced evidence to show ODOT negligently maintained the roadway. Defendant explained that the ODOT Licking County Manager<sup>1</sup>, "conducts roadway inspections on I-70 in Fairfield County on a routine basis, at least twice a week for potholes." Apparently no potholes were discovered at milepost 112.0 on Interstate 70 the last time this roadway was inspected prior to May 9, 2008. Defendant records show that pothole patching operations were conducted in the vicinity of milepost 112.0 on Interstate 70 on February 15, 2008 and February 21, 2008. Defendant insisted that if any ODOT personnel "had detected any defects they would have been promptly scheduled for repair." Defendant asserted plaintiff failed to offer evidence to establish her property damage was attributable to any conduct on the part of ODOT.

#### CONCLUSIONS OF LAW

{¶ 5} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶ 6} In order to recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the pothole 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.

{¶ 7} To prove a breach of duty by defendant to maintain the highways, plaintiff must establish, by a preponderance of the evidence, that ODOT had actual or constructive notice of the precise condition or defect alleged to have caused the

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<sup>1</sup> Licking County manages Fairfield County for both directions of Interstate 70 that pass through Fairfield County.

accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. 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, 31 OBR 64, 507 N.E. 2d 1179. No evidence has shown that defendant had actual notice of the damage-causing pothole. Therefore, in order to prove liability, constructive notice of the pothole must be shown.

{¶ 8} The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time that the defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. 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 287, 587 N.E. 2d 891. There is no evidence of constructive notice of the pothole.

{¶ 9} Plaintiff has not produced any evidence to infer that 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.

{¶ 10} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her property damage was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant. *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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ENTRY OF ADMINISTRATIVE DETERMINATION

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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Kathy Roberson  
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RDK/laa  
9/30  
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