

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

JOHNATHAN J. RUDY

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-02553-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 30, 2009, at approximately 12:20 p.m., plaintiff, Johnathan J. Rudy, was traveling north on Interstate 675 near milepost 21 when his 2007 Chevrolet Cobalt struck a roadway defect causing wheel damage to the vehicle. Plaintiff described the defective roadway condition noting “[t]here was a pothole, if you can call it that, which stretched for over 100 yds down the center of the highway.” Plaintiff recalled he drove his vehicle to the center of the roadway to avoid “a stalled or stuck motorist partially blocking the right lane where I was driving (and when) I moved to the left to avoid him and hit one of the potholes.”

{¶ 2} 2) Plaintiff asserted is property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of defects. Plaintiff filed this complaint seeking to recover \$149.00, the cost of replacement parts and related repair expenses he incurred. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that

no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff's property damage occurrence. Defendant denied receiving any prior complaints regarding the pothole which DOT located near milepost 21.0 on Interstate 675 in Greene County. Defendant noted that plaintiff did not produce any evidence to establish the length of time the potholes were present on the roadway before 12:20 p.m. on January 30, 2009. Defendant asserted plaintiff failed to prove the damage-causing roadway defect was related to any conduct attributable to DOT.

{¶ 4} 4) Furthermore, defendant argued that plaintiff failed to produce evidence to show the roadway was negligently maintained. Defendant explained that the DOT "Greene County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month." Apparently, no potholes were discovered at milepost 21.0 on Interstate 675 the last time that specific section of roadway was inspected prior to January 30, 2009. Defendant observed that if any DOT employees had found "any defects they would have been promptly scheduled for repair." DOT records show that potholes were patched in the vicinity of plaintiff's property damage incident on August 7, 2008, August 19, 2008, August 27, 2008, and January 12, 2009.

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 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, 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.

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time

the particular potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that 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 that the pothole appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication that defendant had constructive notice of the potholes. 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. 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Johnathan J. Rudy
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RDK/laa
5/21
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