

[Cite as *Miltenberger v. Ohio Dept. of Transp.*, 2003-Ohio-3592.]

IN THE COURT OF CLAIMS OF OHIO

TODD MILTENBERGER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2003-01504-AD
 :
 OHIO DEPARTMENT OF : MEMORANDUM DECISION
 TRANSPORTATION :
 :
 Defendant :
 :
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FINDINGS OF FACT

{¶1} 1) On January 9, 2003, plaintiff, Todd Miltenberger, was traveling north on Interstate 75 north of Interstate 275 in Hamilton County when his automobile struck a pothole causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$444.25, the cost of automotive repair which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show three pothole patching operation were needed in the general vicinity of plaintiff's incident during the fifteen day period preceding plaintiff's property damage event. Defendant's evidence shows Department of Transportation employees were repairing a pothole in the vicinity of

plaintiff's incident on January 9, 2003, the day plaintiff's damage occurred.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶7} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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.

{¶8} 3) There is no evidence defendant had actual notice of the pothole.

{¶9} 4) 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 (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 5) 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.

{¶11} 6) 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.

{¶12} 7) No evidence has shown defendant had constructive notice of the pothole.

{¶13} 8) Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶14} Having considered all the evidence in the claim file and, for reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of the defendant. Court costs shall be absorbed by the court. 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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RDK/DRB/tad
5/15
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