

[Cite as *Conley v. Ohio Dept. of Transp.*, 2003-Ohio-3600.]

IN THE COURT OF CLAIMS OF OHIO

JEFF CONLEY	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02837-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On January 29, 2003, plaintiff, Jeff Conley was traveling north on State Route 72 near State Route 729 in Clinton County, when his truck struck a broken road reflector laying on the traveled portion of the roadway. Plaintiff stated his truck tires were damaged as a result of striking the broken reflector.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$165.00, the cost of replacement tires, plus \$25.00 for filing fees. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the broken reflector was on the roadway surface prior to his property damage occurrence.

CONCLUSIONS OF LAW

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

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Dept.* (1985), 85-02071-AD.

{¶7} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective (broken reflector) 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} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

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

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (broken reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶12} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

{¶13} 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:

Jeff Conley Plaintiff, Pro se
6685 St. Rt. 729
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For Defendant

RDK/DRB/tad
5/15
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