

[Cite as *Bargar v. Ohio Dept. of Transp.*, 2003-Ohio-6433.]

IN THE COURT OF CLAIMS OF OHIO

| | | |
|------------------------------|---|----------------------------|
| GARY D. BARGAR | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2003-08649-AD |
| OHIO DEPT. OF TRANSPORTATION | : | <u>MEMORANDUM DECISION</u> |
| Defendant | : | |

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FINDINGS OF FACT

{¶1} 1) On July 14, 2003, plaintiff, Gary D. Bargar, was traveling on State Route 258 about one-tenth of a mile west of Stillwater in Tuscarawas County, when his automobile struck a pothole in the traveled portion of the roadway. The pothole caused tire and rim damage to plaintiff's vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$97.83, the cost for automotive repair. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the pothole existed.

{¶4} 4) Plaintiff has not presented any evidence to indicate the length of time the pothole was on the roadway 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 diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (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 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} 4) There is no evidence defendant had actual notice of the pothole.

{¶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 (pothole) 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 (pothole) 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 pothole.

{¶12} 8) Furthermore, plaintiff has failed to show defendant had constructive notice of the damage-causing pothole.

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

{¶14} 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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RDK/laa
10/22
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