

[Cite as *Kinser v. Ohio Dept. of Transp., Dist. 5, 2004-Ohio-3586.*]

IN THE COURT OF CLAIMS OF OHIO

AARON D. KINSER	:	
Plaintiff	:	
v.	:	CASE NO. 2004-02458-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 5	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
.....	:	

FINDINGS OF FACT

{¶1} 1) On January 3, 2004, plaintiff, Aaron D. Kinser, was traveling southbound on State Route 158 on a bridge spanning Interstate 70 in Licking County, when his automobile struck potholes causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,221.65, 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.

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

{¶4} 4) On May 4, 2004, plaintiff filed a response to defendant’s investigation report. Plaintiff has not submitted any evidence to indicate the length of time the potholes existed prior to the incident forming the basis of this claim. Plaintiff provided a letter from Michael Francis who related his knowledge of the road conditions on State Route 158. However, it appeared Mr. Francis

did not notify defendant concerning the condition of the roadway.

{¶5} 5) Defendant has asserted 30 potholes were patched on January 4, 2004, on State Route 158 in Licking County.

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#### 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 defects (potholes) 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 damage-causing potholes.

{¶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 conditions (potholes) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 5) Size of the defects (potholes) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297.

{¶11} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after dangerous condition (potholes) appeared, 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 potholes.

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

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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DRB/RDK/laa  
5/19  
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