

[Cite as *Hoover v. Ohio Dept. of Transp.*, 2004-Ohio-4139.]

IN THE COURT OF CLAIMS OF OHIO

FRANK W. HOOVER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-05074-AD
 :
 OHIO DEPARTMENT OF : MEMORANDUM DECISION
 TRANSPORTATION :
 :
 Defendant :
 :::::::::::::::

FINDINGS OF FACT

{¶1} 1) On March 27, 2004, at approximately 3:30 a.m., plaintiff, Frank W. Hoover, was traveling north on State Route 83 just a few miles south of the US Route 250 intersection near milepost 8.97 in Wayne County, when his automobile struck a massive pothole in the roadway. Plaintiff related, "there must have been a rod of some sort in the hole, because when my rear tire hit the hole the rod went through my rear tire and punctured a hole right through the aluminum wheel." Plaintiff further related the traveled portion of State Route 83 was in a deteriorated condition with the roadway littered with potholes.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$123.78 for a replacement tire, \$106.75 for a replacement wheel, \$49.99 for the cost of a car jack which was damaged as a result of the March 27, 2004, incident, and \$25.00 for reimbursement of filing fees. Plaintiff's total damage claim amounts to \$305.52. The requisite material filing fee was paid. Plaintiff asserted he

incurred all damages claimed as a proximate cause of negligence on the part of defendant, Department of Transportation (DOT), in failing to adequately maintain the roadway.

{¶3} 3) Defendant denied liability based on the contention no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's property damage occurrence. Defendant stated DOT's records indicate no calls or complaints were received concerning the particular pothole that damaged plaintiff's automobile. Defendant denied having any type of notice regarding the damage-causing pothole. Defendant suggested it is likely the pothole had been formed for a short period of time prior to plaintiff's March 27, 2004, property damage event.

{¶4} 4) Defendant argued plaintiff did not produce evidence to establish DOT negligently maintained State Route 83. Defendant rated State Route 83 as being in good condition prior to March 27, 2004. Furthermore, defendant noted DOT employees conduct roadway inspections on a routine basis and do not neglect repairing noticed roadway defects.

{¶5} 5) Plaintiff filed a response¹ expressing his disagreement with the assertions made by defendant's representative. Plaintiff characterized defendant's investigation as a "joke." Plaintiff described defendant's representative as "blind or a liar or he was on the wrong road." Plaintiff submitted several photographs depicting the subsequent repairs made to State Route 83 and his damaged property. Plaintiff stated the condition of State Route 83 on March 27, 2004, looked like landmines had been detonated on the traveled portion of the roadway. Plaintiff did not submit any evidence to establish the length of time the pothole his automobile struck existed prior to the incident forming the basis of this claim.

¹ Plaintiff's response was filed on June 21, 2004.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶7} 2) In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the 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) 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.

{¶9} 4) 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 297.

{¶10} 5) Plaintiff has not produced any evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show 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 the pothole appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer 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.. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶11} 6) Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant, that defendant was negligent in maintaining area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1988), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

{¶12} 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:

Frank W. Hoover
9451 CR #320
Millersburg, Ohio 44654

Plaintiff, Pro se

Gordon Proctor, Director

For Defendant

Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

DRB/RDK/laa

6/24

Filed 7/8/04

Sent to S.C. reporter 8/5/04