

[Cite as *Hornsby v. Ohio Dept. of Transp., Dist. 10, 2004-Ohio-7293.*]

IN THE COURT OF CLAIMS OF OHIO

RANDY HORNSBY :
Plaintiff :
v. : CASE NO. 2004-09436-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION, DISTRICT 10 :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On August 27, 2004, an automobile owned by plaintiff, Randy Hornsby, struck a pothole at milepost 1.00 of State Route 329 in Athens County causing tire and rim damage to the vehicle. The pothole was located partially on the traveled portion of the roadway at the highway edge line.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$940.63, 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 \$25.00 filing fee.

{¶ 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.¹

¹ Plaintiff filed a response on November 17, 2004.

{¶ 5} 5) Defendant has asserted maintenance records show no pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-month period preceding the August 27, 2004, property damage event.

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 damage-causing 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 297.

{¶ 11} 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 the existence of the defect. *Guiher v. Jackson* (1978), 78-0126-AD.

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

Columbus, Ohio 43223

RDK/laa

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