[Cite as Partin v. Ohio Dept. of Transp., 2006-Ohio-7190.]

IN THE COURT OF CLAIMS OF OHIO

GERALD L. PARTIN :

Plaintiff :

v. : CASE NO. 2005-11795-AD

OHIO DEPARTMENT OF : MEMORANDUM DECISION

TRANSPORTATION

:

Defendant

FINDINGS OF FACT

- $\{\P 1\}$ 1) On November 20, 2005, at approximately 6:00 p.m., plaintiff, Gerald L. Partin, was traveling west on State Route 97 just beyond the Village of Butler, Ohio, when his car struck a deep pothole in the roadway causing tire and other damage to the vehicle.
- $\{\P\,2\}$ 2) Plaintiff filed this complaint seeking to recover \$549.65, the cost of replacement parts and automotive repair necessitated by the November 20, 2005, event. Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The \$25.00 filing fee was paid.
- $\{\P 3\}$ 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole on the freeway exit ramp prior to plaintiff's November 20, 2005, property damage occurrence. Defendant located the damage-causing pothole at about milepost 14.5 on State Route 97 in Summit County. Defendant asserted plaintiff failed to produce

any evidence showing how long the pothole existed prior to 6:00 p.m. on November 20, 2005. Defendant acknowledged receiving a complaint about the pothole on November 21, 2005, the day after plaintiff's incident.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff's incident. Defendant explained DOT employees conduct roadway inspections, "at least two times a month." Apparently no potholes were discovered during previous roadway inspection. Defendant suggested the pothole likely, "existed for only a short time before the incident," forming the basis of this claim. Defendant denied DOT employees were negligent in regard to roadway maintenance.

CONCLUSIONS OF LAW

- $\{\P 5\}$ Defendant has the duty to maintain its highways 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.
- $\{\P 6\}$ In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. 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.

 $\{\P 7\}$ Plaintiff has not produced sufficient evidence indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this Plaintiff has not shown defendant had actual notice of the pothole for a sufficient length of time to invoke liability. 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 Spires v. Highway Department (1988), 61 Ohio Misc. 2d 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), 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE

TRANSPORTATION DETERMINATION

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:

Defendant

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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Gordon Proctor, Director
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For Defendant

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RDK/laa 3/24 Filed 6/1/06 Sent to S.C. reporter 6/22/06