

[Cite as *Johnson v. Ohio Dept. of Transp.*, 2006-Ohio-7199.]

IN THE COURT OF CLAIMS OF OHIO

JOHN H. JOHNSON	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01424-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On January 7, 2006, at approximately 8:50 a.m., plaintiff, John H. Johnson, was traveling south on State Route 3, "over the bridge at Little Apple Creek," in Wayne County, when his van struck a "large piece of road patch material" in the roadway. The road patch debris caused substantial damage to the oil pan of the vehicle plaintiff was driving.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$483.64, the automotive repair costs incurred after the January 7, 2006, incident. Plaintiff implied the property damage to his van was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining State Route 3. The filing fee was paid.

{¶ 3} 3) Defendant denied any liability based on the assertion it had no knowledge of any roadway defect or debris condition on State Route 3 at milepost 18.47 in Wayne County prior to plaintiff's property damage occurrence. Defendant related no calls or complaints were received at DOT's Wane

County Garage regarding a deteriorating roadway surface condition on State Route 3 before January 7, 2006. Defendant explained DOT personnel conducted routine roadway inspections and did not discover any deteriorated roadway surface at milepost 18.47 on State Route 3 in Wayne County prior to January 7, 2006.

{¶ 4} Plaintiff did not present any evidence to establish the length of time the particular roadway surface had been deteriorated prior to the incident forming the basis of this claim.

CONCLUSIONS OF LAW

{¶ 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.

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

{¶ 7} 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.

{¶ 8} Plaintiff has not produced any evidence to indicate the length of time the debris condition 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 debris. 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 debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the debris.

{¶ 9} Finally, 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 roadway debris.

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OHIO DEPT. OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

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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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

Case No. 2006-01424-AD

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MEMORANDUM DECISION

RDK/laa

5/24

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