

[Cite as *Short v. Ohio Dept. of Transp.*, 2006-Ohio-7202.]

IN THE COURT OF CLAIMS OF OHIO

SHANE M. SHORT	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01530-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On January 14, 2006, at approximately 8:00 p.m., plaintiff, Shane M. Short, was traveling west on Beechmont Avenue in Cincinnati, "near the intersection of Beechmont Ave. and Glen-Este Withamsville Road," when his car struck a pothole causing wheel and tire damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$531.37, his insurance deductible for the cost of replacement parts, automotive repair, and associated expenses necessitated by the January 14, 2006, 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.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff's January 14, 2006, property damage occurrence. Defendant located the damage-causing pothole at about milepost 1.96 on State Route 125 in Clermont County. Defendant asserted plaintiff failed to produce any evidence showing how long the

pothole existed prior to 8:00 p.m. on January 14, 2006.

{¶ 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 inspections. 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

{¶ 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 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.

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. 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 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. 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.

IN THE COURT OF CLAIMS OF OHIO

SHANE M. SHORT :
Plaintiff :
v. : CASE NO. 2006-01530-AD
OHIO DEPT. OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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:

Shane M. Short
1800 Linkside Drive #4
Cincinnati, Ohio 45245

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa

5/24

Filed 6/14/06

Sent to S.C. reporter 3/16/07