**[Cite as *DeRosa v. Ohio Dept. of Transp.*, 2006-Ohio-7214.]**

IN THE COURT OF CLAIMS OF OHIO

| | | |
|---|---|---|
| DARIN DEROSA | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2006-01793-AD |
| OHIO DEPARTMENT OF TRANSPORTATION | : | <u>MEMORANDUM DECISION</u> |
| | : | |
| Defendant | | |

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

**{¶ 1}** 1) On January 13, 2006, plaintiff, Darin DeRosa, was traveling west on Interstate 90, "between Menter [sic] and the 271 and Cleveland Rt 90 west split," when his automobile struck a pothole in the traveled portion of the roadway. The impact of striking the pothole caused rim damage to plaintiff's vehicle.

**{¶ 2}** 2) Plaintiff filed this complaint seeking to recover $221.58, his total cost of automotive repair which plaintiff contends he incurred as a result of 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 fact it professed to have no knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant denied receiving any prior complaints about the pothole which DOT located "between state mileposts 193.8 and 188.6 . . . on I-90 in Lake County." Defendant explained, "it is likely the pothole existed for only a short time before the incident."

**{¶ 4}** 4) Plaintiff did not submit any evidence to establish the length of time the pothole existed prior to the January 13, 2006, property damage event.

**{¶ 5}** 5) Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

CONCLUSIONS OF LAW

**{¶ 6}** 1) 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.

**{¶ 7}** 2) 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. 3) There is no evidence defendant had actual notice of the damage-causing

pothole.

**{¶ 8}** 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.

**{¶ 9}** 5) 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.

**{¶ 10}** 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 or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

IN THE COURT OF CLAIMS OF OHIO

| | | |
|---|---|---|
| DARIN DEROSA | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2006-01793-AD |
| OHIO DEPARTMENT 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:

Darin DeRosa
3816 Wade Avenue
Ashtabula, Ohio 44004

Plaintiff, Pro se

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

For Defendant

RDK/laa
6/14
Filed 7/6/06
Sent to S.C. reporter 3/22/07