

[Cite as *Dilbone v. Ohio Dept. of Transp.*, 2006-Ohio-7208.]

IN THE COURT OF CLAIMS OF OHIO

JEFF DILBONE :
 Plaintiff :
v. : CASE NO. 2006-02439-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
 Defendant :
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FINDINGS OF FACT

{¶ 1} 1) On March 6, 2006, at approximately 11:00 p.m., a car owned by plaintiff, Jeff Dilbone, struck "a deep pothole" in the eastbound lane of US Route 50 in Terrance Park, Ohio. The pothole caused rim damage to plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$139.78, 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 and plaintiff seeks recovery of that amount.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole on the roadway prior to plaintiff's March 6, 2006, property damage occurrence. Defendant located the damage-causing pothole at about milepost 35.73 on US Route 50 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to 11:00 p.m. on March 6, 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 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

{¶ 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

JEFF DILBONE :
 Plaintiff :
 v. : CASE NO. 2006-02439-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:

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RDK/laa
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