

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ANGEL S. BLAKES

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-03591-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 25, 2006, plaintiff, Angel S. Blakes, was traveling south on Interstate 75, when her automobile struck a pothole causing tire and rim damage to the vehicle. Plaintiff located the damage-causing pothole on 75 South “before you get to the Gilbert and Paddock exit.” Plaintiff pointed out it was raining very hard at the time of her property damage incident.

{¶ 2} 2) Plaintiff related she took a photograph of the pothole on March 26, 2006, the day after her incident. The submitted photograph depicts a massive pothole in the traveled portion of the roadway. Upon examination of the photograph, it appears the pothole was formed when a previous patch repair deteriorated.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$745.00, the cost of replacement parts resulting from the March 25, 2006, damage occurrence. The filing fee was paid. Plaintiff implied her vehicle was damaged as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway.

{¶ 4} 4) Defendant denied liability based on the contention that no DOT

personnel had any knowledge of the pothole on the roadway prior to plaintiff's property damage occurrence. Defendant located the damage-causing pothole at milepost 12.03 on Interstate 75 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim, which DOT stated plaintiff located on I-75 South in Lockland near the Cooper Avenue Exit.

{¶ 5} 5) 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. Defendant's records show DOT conducted pothole patching operations in the vicinity of plaintiff's incident on January 9, January 10, January 25, 2006, and February 24, 2006.

CONCLUSIONS OF LAW

{¶ 6} 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} 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 incident. *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.

{¶ 8} 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. Ohio 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 287. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.



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ENTRY OF ADMINISTRATIVE
DETERMINATION

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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For Defendant

RDK/

laa

9/12

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