

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

BRIAN STICKROD

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-04911-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On July 26, 2006, at approximately 11:00 a.m., plaintiff, Brian Stickrod, was traveling south on Interstate 75 on a bridge between the Ohio and Kentucky border in Hamilton County, when his automobile struck a “very large hole” causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$856.23, the total cost for automotive repair necessitated by the property damage 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 on the roadway prior to plaintiff’s property damage occurrence. Defendant located the damage-causing pothole at milepost 0.21 on the Brent Spence Bridge on Interstate 75, in Hamilton County. Defendant asserted plaintiff failed to produce evidence showing how long the pothole existed prior to the incident forming the basis of this claim. In another claim, *Dunbar v. Department of*

Transportation, 2006-05012-AD, evidence was presented to show plaintiff in that claim struck the same pothole on the Brent Spence Bridge at about 7:15 a.m. on July 26, 2006. Therefore, evidence exists to establish the damage-causing pothole was present for at least almost four hours prior to plaintiff Stickrod's property damage occurrence. Defendant submitted documents showing two individuals made phone complaints on July 26, 2006, about the pothole on the Brent Spence Bridge on Interstate 75. The approximate times on July 26, 2006, these phone complaints were received were not recorded.

{¶ 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} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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. No evidence has shown defendant had actual notice of the damage causing pothole. Although evidence has shown DOT

received actual notice of the defect on the day of plaintiff's incident, there is no indication from defendant actual notice was received before 11:00 a.m. on July 26, 2006.

{¶ 7} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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 developed. *Spires v. Ohio Highway Dept.* (1988), 61 Ohio Misc. 2d 262. Additionally, size of a pothole is insufficient to prove notice or duration of existence. *O'Neil v. Ohio Department of Transp.* (1988), 61 Ohio Misc. 2d 287.

{¶ 8} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD. Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Ohio Department of Transportation* (1988), 61 Ohio Misc. 2d 287. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set time standard for the discovery of certain road hazards." *Bussard, supra*, at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb. 4, 1993), Franklin App. 92AP-1183, 1993 Ohio App. LEXIS 636.

{¶ 9} Evidence has shown the pothole on Interstate 75 was present at least three hours prior to plaintiff's property damage event. The issue presented is whether this evidence constitutes a finding of constructive notice of the defect. "[C]onstructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice or knowledge." *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197. Constructive notice of roadway potholes has been determined in multiple claims involving less than a twenty-four hour time frame. See *McGuire v. Ohio Department of Transportation* (2002), 2001-08722-AD; *Piscioneri v. Ohio Dept. of*

Transportation, District 12; 2002-10836-AD, 2003-Ohio-2173, jud; *Kill v. Ohio Department of Transportation*, 2003-01512-AD, 2003-Ohio-2620, jud; *Grothouse v. Ohio Department of Transportation, District 1*; 2003-01521-AD, 2003-Ohio-2621, jud; *Zeigler v. Department of Transportation*, 2003-01652-AD, 2003-Ohio-2625; *Sheaks v. Ohio Department of Transportation*, 2003-02179-AD, 2003-Ohio-2176, jud.

{¶ 10} However, in the matter of *Pompignano v. Ohio Dept. of Transp.*, 2005-02117-AD, jud; 2005-Ohio-3976, in a Motion for Court Review, the court concluded in reversing a determination by the Clerk that thirteen hours constructive notice of a defect is insufficient notice to invoke liability on DOT. The court in reversing the finding of constructive notice quoted and adopted DOT's argument: "It is inappropriate that ODOT be held negligent for not patrolling every square mile of roadway every twelve hours. Such a ruling is against all case law created outside the limited arena of these administrative decisions." (Defendant's motion for court review, page 7). In its reversal order the court also recognized a constructive notice standard involving down signage. The court noted in finding, "that evidence of a stop sign being down for less than 24 hours was not enough time to impute constructive notice of its condition to ODOT." See *Cushman v. Ohio Dept. of Transp.* (1995), 91-11591; affirmed (March. 14, 1996), Franklin App. No. 95API07-844, 1996 Ohio App. LEXIS 990. The court, in the instant claim, is required to follow existing precedent. Consequently, plaintiff has failed to prove defendant had sufficient constructive notice of the damage-causing pothole to invoke liability.

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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:

Brian Stickrod
9 Glen Street #3
Florence, Kentucky 41042

Plaintiff, Pro se

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

For Defendant

RDK/laa
10/13
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