

[Cite as *Kaczmarowski v. Ohio Dept. of Transp.*, 2007-Ohio-1275.]

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

PETER KACZMAROWSKI

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-06329-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On August 28, 2006, at approximately 7:15 a.m., plaintiff, Peter Kaczmarowski, was traveling west on Montgomery Road (US Route 22) in the Kenwood Mall area, when his truck ran over an open manhole in the roadway. Plaintiff related his truck tire, rim, brake drum, and rear axle were damaged as a result of driving over the open manhole. The open manhole condition had been previously discovered by an officer of the local police department at approximately 6:48 a.m. on August 28, 2006.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,629.72, the cost of truck repair resulting from the August 28, 2006, incident. Plaintiff contended he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous condition on the roadway. The filing fee was paid.

{¶3} 3) Defendant denied having any knowledge of the open manhole condition prior to plaintiff’s incident. Defendant located the manhole at milepost 11.68 on US Route 22 in Madeira, Hamilton County, Ohio. Defendant explained DOT maintains the westbound road lanes of US Route 22 in this area and the City of Madeira maintains the eastbound lanes. Defendant denied receiving any calls or complaints regarding the open manhole condition before plaintiff’s property damage occurrence. Evidence has shown Officer Lee of the Madeira Police Department notified the Indian Hills Waterworks personnel about the manhole condition at 6:58 a.m. on August 28, 2006. However, DOT was not informed of the condition. Defendant suggested the manhole condition likely, “existed for only a short time before the incident.” Defendant related DOT personnel conducted routine road inspections and did not discover any open manhole on US Route 22 prior to August 28, 2006. DOT work crews were repairing drainage structures at milepost 12.00 on US Route 22 on August 28, 2006. Although this crew was working in the general area of plaintiff’s damage occurrence, no evidence has been presented to show the DOT crew had any knowledge of the manhole condition at milepost 11.68 on US Route 22.

CONCLUSIONS OF LAW

{¶4} 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

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Kniskern v. Township of Somerford (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶5} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the condition and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. 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.

{¶6} Plaintiff has not produced any evidence to indicate the length of time the open manhole condition 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 condition of the manhole cover. 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 defective condition 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 open manhole. 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 damages plaintiff may have suffered from the open manhole.

{¶7} 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 condition 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.

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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:

Peter Kaczmarowski
9266 Fidelis Drive
Cincinnati, Ohio 45242

Keith Swearingen, Acting Director
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RDK/laa
1/12
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