

[Cite as *Salvucci v. Ohio Dept. of Transp.*, 2007-Ohio-1617.]

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

CHRISTINE SALVUCCI

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-07171-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On October 25, 2006, at approximately 7:30 a.m., a car owned by plaintiff, Christine Salvucci, was traveling west on US Route 35 towards Dayton through a construction zone, when the vehicle struck “a large piece of concrete.” The concrete debris damaged the wheel of plaintiff’s car beyond repair.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$387.91, the total cost of a replacement wheel. Plaintiff has asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway in a construction area on US Route 35 in Montgomery County. The filing fee was paid.

{¶3} 3) Defendant denied any liability for any damage caused by a roadway defect or debris condition in a construction area which DOT located on US Route 35 between mileposts 15.07 to 18.27. Defendant explained the area where plaintiff’s damage occurred was located within a construction zone under the control of DOT contractor, Kokosing Construction Company, Inc. (“Kokosing”). Additionally, defendant denied liability in this matter based on the allegation that neither DOT nor Kokosing had any knowledge of any roadway debris plaintiff’s vehicle struck. Defendant submitted evidence showing Kokosing repairs roadway defects as soon as notice of the defect is received. Defendant pointed out Kokosing was engaged in pothole patching on the morning plaintiff’s property damage occurred. Apparently, various potholes in the construction area of US Route 35 were patched between 7:00 a.m. and 9:00 a.m. on October 25, 2006.

{¶4} 4) Plaintiff did not submit any evidence to establish the length of time the damage-causing roadway defect was on the roadway prior to the October 25, 2006, incident.

{¶5} 5) Defendant asserted Kokosing, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued Kokosing is the proper party defendant in this action. Defendant implied all duties such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair defects, were delegated when an independent contractor takes control over a particular section of roadway.

{¶6} 6) Furthermore, defendant again denied having any sufficient notice of the damage-causing defect or pothole. Defendant contended plaintiff failed to introduce

Case No. 2006-07171-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

evidence proving any requisite notice.

CONCLUSIONS OF LAW

{¶7} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD, jud, 2004-Ohio-151.

{¶8} 2) Defendant has the duty to maintain its highway 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.

{¶9} 3) 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.

{¶10} 4) Plaintiff has not produced any evidence to indicate the length of time the defective condition was present on the roadway prior to the incident forming the basis of this claim. Evidence of actual notice of potholes on US 35 has been submitted by defendant. However, this notice, perhaps thirty minutes, is insufficient to invoke liability if plaintiff's vehicle was damaged by a pothole. 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 or debris 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 roadway defect. Plaintiff has not produced any evidence to infer

Case No. 2006-07171-AD	- 4 -	MEMORANDUM DECISION
------------------------	-------	---------------------

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 defective condition.

{¶11} 5) 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 defect 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. Consequently, plaintiff's claim is denied.

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

CHRISTINE SALVUCCI

Case No. 2006-07171-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

OHIO DEPARTMENT OF TRANS.

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:

Christine Salvucci
2691 Majestic Oaks Court
Beavercreek, Ohio 45431

Keith Swearingen, Acting Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
1/31
Filed 2/16/07
Sent to S.C. reporter 4/5/07