[Cite as *Styles v. Ohio Dept. of Transp.*, 2007-Ohio-2408.]

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

MARION B. STYLES

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-01193-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On December 25, 2006, at approximately 5:00 p.m., plaintiff, Marion B. Styles, was traveling north on Interstate 270 through a construction zone in Franklin County, when his automobile struck a pothole causing tire and rim damage to the vehicle. According to plaintiff, the location of the damage-causing pothole was in the center lane of Interstate 270 North, "around the 31 mile marker which is about the 161/Worthington exit" in Columbus.

{¶2} 2) Plaintiff filed this complaint seeking to recover $1,012.59, the total cost of automotive repair resulting from the December 25, 2006, incident, plus a claim for filing fee reimbursement. Plaintiff has asserted that he 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 zone on Interstate 270 in Franklin County. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant explained that the area where plaintiff's damage occurred was located within a construction area under the control of DOT contractor, National Engineering & Contracting Company (National). Additionally, defendant denied liability in this matter based on the allegation that neither DOT nor National had any knowledge of the roadway defect plaintiff's vehicle struck. Defendant contended that no calls or complaints

were received regarding the damage-causing pothole prior to plaintiff's incident.

{¶4} 4) According to defendant, the location of the pothole that plaintiff's vehicle struck was at milepost 30.52 in the southbound lane of Interstate 270 in Franklin County. Defendant related that DOT contractor National was informed about high water on Interstate 270 southbound at approximately 3:30 p.m. on December 25, 2006. National personnel were dispatched to the area and a "high water" warning sign was placed along the roadway. While placing the warning sign a pothole was observed in this particular roadway area. Apparently, National employees were in the process of gathering personnel, equipment, and material to repair the pothole when plaintiff's incident occurred. The roadway area was closed between 6:00 and 6:30 p.m. on December 25, 2006, in order for pothole-patching operations to be completed. Records offered show DOT Project Engineer, Christine Dicke, received notice from DOT's Radio Room of a pothole on Interstate 270 South near State Route 161 at about 5:38 p.m. on December 25, 2006. The pothole was repaired by 7:16 p.m. on that date. Defendant asserted that both DOT and National acted promptly to ameliorate the roadway condition after receiving notice of any defect.

{¶5} 5) In is response, plaintiff observed that he was told by a DOT representative that actual notice of the pothole was received about 3:30 p.m. on December 25, 2006. Plaintiff related that DOT then notified National of the pothole condition and National responded to the scene to fix the pothole at about 6:30 p.m., approximately 90 minutes after the time plaintiff stated that his damage occurred. Defendant's evidence tends to show that both DOT and National were notified of high water on the roadway around 3:30 p.m. on December 25, 2006, and that a pothole was discovered after a National employee was dispatched to the area and had positioned a warning sign. From this evidence, the trier of fact finds that actual knowledge of the pothole was received at sometime after 3:30, perhaps as late as 5:38 p.m. when notice was received by DOT Project Engineer, Christine Dicke, from the DOT Radio Room. Plaintiff stated he did not

see any "high water" warning signs or other signs posted along the roadway at approximately 5:00 p.m. on December 25, 2006. Plaintiff contended that both DOT and National had sufficient notice of the damage-causing pothole to prove liability.

CONCLUSIONS OF LAW

{¶6} 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*, 2003-09343-AD, jud, 2004-Ohio-151.

{¶7} 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.

{¶8} 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.

{¶9} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that 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 that defendant had

constructive notice of the pothole. Plaintiff has not produced any evidence to infer that 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.

{¶10} 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, that defendant was negligent in maintaining the construction area, 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.

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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.

_____
MILES C. Durfey
Clerk

Entry cc:

Marion B. Styles
642 Grifton Avenue
Akron, Ohio 44305

James Beasley, Director
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RDK/laa
3/14
Filed 4/18/07
Sent to S.C. reporter 5/18/07