

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

JIM SCHLEICHER

Case No. 2007-02629-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) On February 20, 2007, between 7:30 p.m. and 8:00 p.m., plaintiff, Jim Schleicher, was traveling east on, “Ohio Pike (Route 125) in Clermont Co. about the 800 Block,” when his 1993 Eagle Talon struck a large pothole causing substantial damage to the vehicle. Plaintiff related that there were multiple potholes, “located on Route 125 between Glen Este Withamsville Rd & the Withamsville Fire Department 700-800 Block of Route 125.”

{¶2} 2) Plaintiff filed this complaint seeking to recover \$315.88 for replacement parts and automotive repair resulting from the February 20, 2007, property damage event. Plaintiff implied that the damage to his vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. The 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, “approximately at milepost 1.96 on SR 125 in Clermont County.” Defendant submitted documents showing that DOT employees conducted pothole patching operations on State Route 125 from

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mileposts 1.00 to 7.00. The pothole repairs in this area were done on February 20, 2007. Presumably no employee associated with the DOT repair crew noticed a pothole at milepost 1.96 during these patching operations. Defendant asserted that plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff's incident. Defendant explained that DOT employees conduct roadway inspections, "at least two times a month." Apparently no potholes were discovered during previous roadway inspections. Defendant suggested that the pothole likely, "existed for only a short time before the incident," forming the basis of this claim. Defendant denied that DOT employees were negligent in regard to roadway maintenance.

{¶5} 5) Plaintiff did not submit any evidence to establish the length of time the defect was on the roadway prior to his property damage incident.

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 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.

{¶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

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claim. Plaintiff has not shown that defendant had actual notice of the 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 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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OHIO DEPARTMENT OF
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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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
6/25
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