

[Cite as *Hofecker v. Ohio Dept. of Transp.*, 2007-Ohio-4874.]

# 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  
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KATHRYN HOFECKER

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-03722-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Kathryn Hofecker, stated she was traveling west on State Route 113, “between Oberlin Road and State Route 58,” when her automobile, “hit a series of large potholes,” causing rim damage to the vehicle. Plaintiff related the damage incident occurred at approximately 5:20 p.m. on February 20, 2007. Plaintiff submitted a photograph depicting the roadway where her property damage occurred. The photograph shows the roadway after pothole patching had been performed.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$221.41, the cost of a replacement rim and related expenses resulting from the February 20, 2007, incident. Plaintiff implied she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the potholes prior to plaintiff’s property damage event. Defendant denied receiving any calls or complaints regarding the damage-causing potholes, which DOT located between mileposts 7.48 and 8.38 on State Route 113 in Lorain County. Defendant suggested the potholes, “existed in that location for only a relatively short amount of time before the incident,” forming the basis of this claim.

{¶4} 4) Defendant contended plaintiff failed to produce evidence to prove DOT negligently maintained the roadway. Defendant pointed out DOT’s Lorain County Manager conducts inspections of all state roadways within Lorain County, “at least two times a month.” Apparently no potholes were discovered between mileposts 7.48 and 8.38 on State Route 113 the last time that roadway was inspected prior to February 20, 2007. Defendant asserted plaintiff did not produce any evidence to show the length of time the potholes existed prior to 5:20 p.m. on February 20, 2007. Defendant related, if Dot personnel had known about a pothole problem on State Route 113, the particular roadway defects would have been scheduled for repair.

## CONCLUSIONS OF LAW

{¶5} 1) 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, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678

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N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶6} 2) 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, 517 N.E. 2d 1388. 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, 507 N.E. 2d 1179.

{¶7} 3) There is no evidence defendant had actual notice of the damage-causing potholes.

{¶8} 4) 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 (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence defendant had constructive notice of the potholes.

{¶9} 5) 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 damage plaintiff may have suffered from the potholes.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
7/12  
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