[Cite as *Martin v. Dept. of Transp.*, 2007-Ohio-6957.]

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

MICHELE L. MARTIN

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-04818-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 23, 2007, at approximately 10:00 p.m. plaintiff, Michele L. Martin, was traveling, "south on Colerain Ave. entering the 74 entrance to the expressway," in Cincinnati, when her automobile struck, "a huge pothole," causing tire and wheel damage to the vehicle.

{¶2} 2) Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to properly maintain the roadway. Consequently, plaintiff filed this complaint seeking to recover $1,552.63, the total cost of replacement parts and automotive repair expenses she incurred as a result of the March 23, 2007, incident. The filing fee was not paid.

{¶3} 3) Defendant denied any liability in this matter asserting plaintiff failed to produce evidence establishing her property damage was related to any negligent act or omission on the part of DOT. 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, "on the ramp from southbound US 27 to southbound I-74 where it passes under I-74 at I-74 milepost 18.40 in Hamilton County." Defendant observed, "US 27 overlaps I-74 and I-

75 in the area of the claimed incident."

{¶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.

{¶5} 5) Plaintiff did not produce evidence establishing the length of time the pothole existed prior to his property damage occurrence at 10:00 p.m. on March 23, 2007.

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, 3 O.O. 3d 413, 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 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶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, 517 N.E. 2d 1388. Defendant is only liable for roadway condition of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179.

{¶8} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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 developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d

262, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the pothole. 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. 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, 587 N.E. 2d 891.

{¶9} 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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Michele L. Martin
2244 New Linden
Newport, Kentucky 41071

James G. Beasley, Director
Department of Transportation
1980 West Broad Street

Columbus, Ohio 43223

RDK/laa
9/6
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