

# 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

RUTH A. DRUGAN

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-04923-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} 1) Plaintiff, Ruth A. Drugan, stated she was, “traveling north on State Route 39/State Route 164 approximate one mile north of Salineville and approximate two tenths mile north of Jakubowski Road north of post sign 3,” when her automobile struck two potholes in the roadway causing wheel damage to the vehicle. Plaintiff recalled the incident occurred on March 30, 2007, at approximately 7:15 a.m. Plaintiff submitted photographs depicting the described roadway area after pothole patching operations had been performed.

{¶2} 2) Plaintiff asserted the property 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 \$383.40, the total cost of a replacement wheel. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of potholes on the roadway prior to March 30, 2007. Defendant asserted plaintiff failed to produce sufficient evidence to establish the length of time the potholes existed at the described location, milepost 3.15 on State Route 39

in Columbia County, prior to 7:15 a.m. on March 30, 2007. Defendant denied receiving any calls or complaints regarding the particular damage-causing potholes prior to the incident. Defendant suggested the potholes, “existed for only a short time before the incident.” Defendant explained DOT Columbia County Manager conducts roadway inspections of all state roadways within the county, “at least two times a month.” Apparently, no potholes were discovered at milepost 3.15 on State Route 39 during the last inspection before March 30, 2007. Defendant denied the roadway was negligently maintained. Defendant’s evidence shows DOT crews patched potholes between mileposts 3.00 and 7.00 on State Route 39 on March 22, 2007.

{¶4} 4) Plaintiff filed a response, disputing defendant’s record that potholes were patched between mileposts 3.00 and 7.00 on State Route 39 on March 22, 2007. Plaintiff reasoned that if potholes had been patched on that date in the listed location no potholes would have been formed at milepost 3.15 by March 30, 2007. Plaintiff suggested the potholes her vehicle struck at milepost 3.15 were known to defendant on March 22, 2007, but were not patched on that date when various other potholes were repaired between mileposts 3.00 and 7.00. Conversely, plaintiff offered that if the potholes at milepost 3.15 were repaired on March 22, 2007, the repair patches had deteriorated by March 30, 2007, creating the potholes her car hit. Plaintiff related she, “traveled this stretch of highway five days a week and these potholes existed prior to March 22, 2007 and after this date.” Plaintiff also noted she was, “aware of the condition of the highway but was unable to avoid the potholes due to the overcast morning and raining causing the potholes to be full with water making it hard to realize the whereabouts of the potholes.” Plaintiff did not offer any evidence other than her assertions to establish the damage-causing potholes were the result of improper repairs. Alternatively, plaintiff did not produce any evidence other than her assertions to show the length of time the potholes existed prior to her property damage event.

#### CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} Plaintiff has not produced sufficient evidence to show the length of time that the particular potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the potholes. Additionally, the trier of fact is precluded from making an inference of constructive notice, unless evidence is presented in respect to the time the pothole or potholes appeared on the roadway. *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 potholes. 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. Plaintiff has not provided evidence to prove that the potholes which her vehicle struck had been previously patched and had rapidly deteriorated. See *Matala v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-01270-AD, 2003-Ohio-2618. Accordingly, plaintiff's claim is denied.

Case No. 2006-03532-AD

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MEMORANDUM DECISION

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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:

Ruth A. Drugan  
104 West Main Street

James G. Beasley, Director  
Department of Transportation

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Salineville, Ohio 43945-1080

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Columbus, Ohio 43223

RDK/laa  
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