

[Cite as *Daniels v. Ohio Dept. of Transp.*, 2007-Ohio-5835.]

# 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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NANCY DANIELS

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-04940-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Nancy Daniels, stated she suffered property damage to her automobile rim from driving over numerous potholes on Interstate 480 and Interstate 71 in Cuyahoga County. Plaintiff related the damage to her automobile rim occurred over an extensive time frame from December, 2006 to February, 2007. Plaintiff recalled she had her vehicle serviced on February 26, 2007, and was told at that time her vehicle rim was damaged. Plaintiff asserted the potholes that damaged her car were located predominately on Interstate 480 near Grayton Road and Cleveland Hopkins Airport as well as numerous other areas.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$160.00, the cost of a replacement rim. Plaintiff contended she incurred this expense as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway system. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the assertion that no DOT personnel had any knowledge of any potholes on Interstate 480 and Interstate 71 prior to plaintiff’s property damage occurrence. Defendant located the roadway defects between state mileposts 9.50 and 10.20 on Interstate 480 in Cuyahoga County and between state mileposts 238.70 and 239.10 on Interstate 71 in Cuyahoga County. Defendant denied receiving any calls or complaints regarding potholes at these specific locations prior to the time frame referenced in plaintiff’s complaint.

{¶4} 4) Defendant suggested the damage-causing potholes, “existed in that location for only a relatively short amount of time before plaintiff’s incident.” Apparently, no potholes were discovered during previous roadway inspections. Defendant denied DOT employees were negligent in regard to roadway maintenance.

{¶5} 5) Despite filing a response, plaintiff did not submit sufficient evidence to establish the length of time the potholes existed prior to the damage-causing 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, 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

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864.

{¶17} 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, 507 N.E. 2d 1179.

{¶18} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole 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 defendant's constructive notice, unless evidence is presented in respect to the time the 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.

{¶19} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately caused by defendant's negligence. Plaintiff failed to show the roadway condition was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *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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MEMORANDUM DECISION

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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  
7/25  
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