[Cite as *Wilson v. Ohio Dept. of Transp., Dist. 8,* 2008-Ohio-4188.]

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

DONALD WILSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 8

Defendant

Case No. 2007-08988-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On October 17, 2007, at approximately 6:30 a.m., plaintiff, Donald Wilson, was traveling "south on South Newman Way near SB I75" in Lincoln Heights, Ohio, when his automobile struck a roadway hazard that was originally thought to be a pothole. Plaintiff stated he subsequently "went back to the scene to investigate" and discovered his vehicle had actually run over an open uncovered manhole. The uncovered manhole on the roadway caused tire and wheel damage to plaintiff's vehicle, a 2006 Honda Civic. Plaintiff submitted photographs depicting the open manhole in the traveled portion of the roadway. Plaintiff also submitted a report he made with the Lincoln Heights Police Department regarding the open manhole condition.

{¶ 2} 2) Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining a hazardous condition on the roadway. Plaintiff filed this complaint seeking to recover $585.51, the total cost of replacement parts and repair expenses resulting from the October 17, 2007 damage event. Plaintiff acknowledged receiving $335.51 from his insurance carrier to pay for automotive repairs. Therefore, pursuant to R.C. 2743.02(D), plaintiff's damage claim shall be limited to $250.00, his insurance coverage deductible.[1] The filing fee was paid.

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[1] R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of (B)(2) of that section apply

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the open manhole roadway condition prior to plaintiff's property damage occurrence. Defendant denied receiving any calls or complaints prior to October 17, 2007 regarding an open manhole which DOT located at milepost 13.30 on Interstate 75 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence to establish the length of time the open manhole condition existed prior to 6:30 a.m. on October 17, 2007. Defendant suggested "it is likely the defect existed for only a short time before the incident." Defendant acknowledged receiving notice of the open manhole from the Lincoln Heights Police Department after plaintiff's damage occurrence.

{¶ 4} 4) Defendant pointed out the DOT "Hamilton County Manager inspects all state roadways within the county at least two times a month." Apparently there was no indication of an open manhole at milepost 13.30 on Interstate 75 the last time that section of roadway was inspected prior to October 17, 2007. Defendant's records note drainage structures at milepost 13.30 were repaired by DOT crews on September 19, 2007 and October 17, 2007. Defendant stated "[t]his shows that ODOT responded when the Lincoln Heights Police officer called about the open manhole."

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 duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive

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under those circumstances."

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, 31 OBR 64, 507 N.E. 2d 1179. 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. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861. There is no evidence defendant had any notice of the open manhole prior to plaintiff's incident and there is no evidence defendant created the condition.

{¶ 7} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object 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.

{¶ 8} Plaintiff has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's roadway maintenance activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to his vehicle. *Hall v. Ohio Department of Transportation* (2000), 99-12863-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:

Donald Wilson
5932 Morning Dew Court
Cincinnati, Ohio 45237

James G. Beasley, Director
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RDK/laa
4/30
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