

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

CHRISTOPHER TALLEY

Case No. 2007-09119-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Christopher Talley, stated, “ I was traveling North on I-75 right after Galbraith Exit 10 I hit a major pothole on the far right lane right before approaching Exit 12 destroying my tire and chrome wheel.” Plaintiff recalled that the described property damage incident occurred at approximately 7:30 a.m. on November 20, 2007. Plaintiff submitted a photograph depicting the damage-causing pothole. The photograph, taken on November 27, 2007, shows a substantial roadway defect that appears to be several inches deep.

{¶2} 2) Plaintiff implied that his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to adequately maintain the roadway by not timely repairing defects. Plaintiff filed this complaint seeking to recover \$600.79, the total cost of replacement parts. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that amount along with his damage claim.

{¶3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff’s November 20, 2007 incident. Defendant denied receiving any calls or complaints about the particular pothole which defendant located between milemarkers 11.0 and 11.84 on

Interstate 75 in Hamilton County. Defendant asserted that plaintiff did not produce any evidence to establish the length of time that the pothole existed on the roadway prior to his property damage event. Defendant suggested that, "it is likely the pothole existed for only a short time before the incident."

{¶4} 4) Defendant related that the DOT "Hamilton County Manager inspects all state roadways within the county at least two times a month." Apparently the last time Interstate 75 was inspected, prior to November 20, 2007, no potholes were discovered between milemarkers 11.0 and 11.84. Defendant explained that all general maintenance and inspection duties were conducted on Interstate 75 prior to November 20, 2007. Defendant contended that plaintiff failed to produce evidence to support a negligence determination.

{¶5} 5) Plaintiff filed a response insisting that the damage to his car was caused by negligence on the part of "the state for failing to maintain a safe and usable highway free of obstruction." Plaintiff noted that his property damage could have "been prevented if the area in question was marked, repaired, or a sign posted stating to be aware of the pothole." Plaintiff requested full reimbursement for the costs incurred to repair his vehicle. Plaintiff did not submit any evidence to indicate the length of time the damage-causing pothole was present on the roadway prior to 7:30 a.m. on November 20, 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 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.

{¶18} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole. 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 pothole 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 pothole. Plaintiff has not produced any evidence to infer that 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

1/31
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