[Cite as *Mheinke v. Ohio Dept. of Transp.*, 2008-Ohio-5622.]

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

SHARON K. MEINKE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-03289-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

[Cite as *Mheinke v. Ohio Dept. of Transp.*, 2008-Ohio-5622.]

FINDINGS OF FACT

{¶ 1} 1) On February 11, 2008, at approximately 11:30 a.m., plaintiff, Sharon K. Meinke, was traveling east on State Route 82 "several feet past Durkee Rd" in Lorain County, when her automobile, a 2007 Toyota Yaris, struck a pothole causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff asserted the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to maintain the roadway. Plaintiff filed this complaint seeking to recover $322.40, the cost of replacement parts and automotive repair expenses she incurred as a result of striking the pothole on State Route 82. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff's property damage occurrence. Defendant denied receiving any prior calls or complaints about the pothole which DOT located near milepost 1.00 on State Route 82 in Lorain County. Defendant suggested, "it is more likely than not that the pothole existed in that location for only a relatively short amount of time before the time of the incident." Defendant asserted plaintiff did not produce any evidence to indicate the length of time the pothole was present on State Route 82 before February 11, 2008.

{¶ 4} 4) Furthermore, defendant contended plaintiff did not produce evidence to prove State Route 82 was negligently maintained. Defendant stated the DOT "Lorain County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month." Apparently, no potholes were discovered near milepost 1.00 on State Route 82 the last time that section of roadway was inspected before February 11, 2008. DOT records show pothole patching operations were conducted in the vicinity of plaintiff's incident on December 24, 2007 and January 7, 2008. Defendant related that if any DOT personnel had found "any further defects they would have been reported and promptly scheduled for repair."

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 recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the pothole and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶ 7} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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. No evidence has shown that defendant had actual notice of the damage-causing pothole.

{¶ 8} The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time that the defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence of constructive notice of the pothole.

{¶ 9} 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶ 10} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her property damage was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1999), 99-10909-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

[Cite as *Mheinke v. Ohio Dept. of Transp.*, 2008-Ohio-5622.]

[Cite as *Mheinke v. Ohio Dept. of Transp.*, 2008-Ohio-5622.]

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

SHARON K. MEINKE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-03289-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

[Cite as *Mheinke v. Ohio Dept. of Transp.*, 2008-Ohio-5622.]

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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Sharon K. Meinke
17017 Chamberlain Road
Grafton, Ohio 44044

James G. Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
7/7
Filed 7/31/08
Sent to S.C. reporter 10/28/08