

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

JEFFREY S. MAGER

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-04170-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On March 19, 2008, plaintiff, Jeffrey S. Mager, was traveling west on State Route 125 in Amelia, Ohio, “slightly past the Gold Star Chilli,” when his automobile struck a pothole causing tire and rim damage to the vehicle.

{¶ 2} Plaintiff asserted the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of defects. Plaintiff filed this complaint seeking to recover the cost of replacement parts for a new tire and rim. The filing fee was paid.

{¶ 3} Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff’s March 19, 2008 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff’s car struck, which DOT located at approximately milemarker 6.94 on State Route 132 in Clermont County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole

existed prior to March 19, 2008. Defendant suggested “it is likely the pothole existed for only a short time before the incident.” Defendant stated the DOT “Clermont County Manager inspects all state roadways within the county at least two times a month.” Apparently, no potholes were discovered at milemarker 6.94 on State Route 132 the last time that section of roadway was inspected prior to March 19, 2008. Defendant’s maintenance records show pothole patching was performed in the vicinity of plaintiff’s incident on February 6, 2008, February 7, 2008, February 25, 2008, February 28, 2008, and on March 5, 2008.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.



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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jeffrey S. Mager

James G. Beasley, Director

2241 Dean Road
Bethel, Ohio 45106

RDK/laa
8/25
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