

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

JEFF K. MOORE

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-07292-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On May 28, 2008, at approximately 10:00 a.m., plaintiff, Jeff K. Moore, was traveling north on Interstate 75 “just north of the I-74/I-75 interchange” when his automobile struck “a large pothole” causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff asserted his property damage was proximately caused by negligence on the part of defendant Department of Transportation (“DOT”), in failing to keep the roadway free of hazardous conditions. Consequently, plaintiff filed this complaint seeking to recover damages of \$1,178.59, the total cost he incurred for replacement parts and automobile repair. The filing fee was paid and plaintiff requested reimbursement of that cost 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 particular damage-causing pothole prior to plaintiff’s property damage occurrence. Defendant denied receiving any prior complaints regarding the pothole which DOT located between mileposts 4.40 and 4.70 on Interstate 75 in Hamilton County. Defendant noted plaintiff did not produce any

evidence to establish the length of time the pothole was present on the roadway before 10:00 a.m. on May 28, 2008. Defendant suggested, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.”

{¶ 4} 4) Furthermore, defendant argued plaintiff failed to produce evidence to show the roadway was negligently maintained. Defendant explained the DOT “Hamilton 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 between mileposts 4.40 and 4.70 on Interstate 75 the last time that specific section of roadway was inspected prior to May 28, 2008. Defendant observed that if any DOT employees had found “any defects they would have been promptly scheduled for repair.” DOT records show potholes were patched in the vicinity of plaintiff’s property damage incident on January 16, 2008, March 3, 2008, March 12, 2008, March 25, 2008, April 3, 2008, and April 8, 2008.

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 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time that 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 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. 578 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jeff K. Moore
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RDK/laa
10/21
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