

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

VIRGINIA A. BOSEMAN

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2009-01603-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On December 27, 2008, between 4:30 and 5:00 p.m., plaintiff, Virginia A. Boseman, was traveling north on Interstate 75 to the Galbraith Road ramp in Hamilton County, when her Toyota Camry struck a large pothole causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff implied that her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (ODOT), in maintaining the roadway. Plaintiff filed this complaint seeking to recover \$1,185.19, the total cost of automotive repair she incurred. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no ODOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's property damage incident. Defendant denied receiving any calls or complaints about this particular pothole which ODOT located at milepost 11.02 on Interstate 75 in Hamilton County. Defendant suggested that, "it is likely the pothole existed for only a short time before the incident."

{¶ 4} 4) Defendant contended that plaintiff failed to produce any evidence to show that the roadway was negligently maintained. Defendant explained that ODOT's Hamilton County Manager conducts roadway inspections of all state roadways in Hamilton County, "at least two times a month." Apparently, the particular damage-causing pothole was not discovered during the last inspection prior to December 27, 2008. ODOT records show potholes were last patched in the vicinity of plaintiff's incident on August 11, 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 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 ODOT 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 injury was proximately caused by defendant's negligence. Plaintiff has 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.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Virginia A. Boseman
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RDK/laa
10/1
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