

# 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

MICHAEL B. REED

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-01654-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On January 12, 2009, at approximately 5:00 a.m., plaintiff, Michael R. Reed, was traveling east on Interstate 480 in Cuyahoga County, when his 2006 Pontiac G6 struck a large pothole causing rim damage to the vehicle. Plaintiff located the damage-causing pothole between milemarker 22.8 and milemarker 23.0

{¶ 2} 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 adequately maintain the roadway free of defects. Plaintiff filed this complaint seeking to recover \$250.00, his insurance coverage deductible for automotive repair. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that plaintiff failed to produce sufficient evidence to establish that either DOT had actual knowledge of the damage-causing pothole prior to 5:00 a.m. on January 12, 2009 or should have known about the pothole prior to plaintiff’s incident. Defendant offered that DOT records indicate one complaint was received regarding the particular pothole on

Interstate 480 “on the day of plaintiff’s incident on January 12, 2009.” Defendant submitted a copy of this complaint in which a motorist made a walk-in complaint at the local DOT garage and reported he was “[d]riving to work on Monday January 12, 2009 at 5:00 a.m. and (his vehicle) hit (a) pothole on I-480 east after the bridge at the Granger Rd. exit.” Defendant suggested “it is likely the pothole existed for only a short time before the incident.” Defendant submitted a copy of DOT records captioned “All Inquiries Between 7/12/08 and 01/12/09 for Route 480 in District 12.” The January 12, 2009 complaint defendant received regarding a pothole on “I-480 east before Granger Rd. Exit” is referenced and included on this DOT generated record. No other entries for January 12, 2009 are included on the record.

{¶ 4} 4) Defendant denied the damage-causing pothole was attributable to any negligent roadway maintenance on the part of DOT. Defendant explained the DOT “Cuyahoga County Manager examines all state roadways within the county at least two times a month.” Apparently no potholes were discovered between mileposts 22.8 and 23.0 on Interstate 480 the last time that section of roadway was examined prior to January 12, 2009. Defendant argued plaintiff did not produce any evidence to prove his damage was proximately caused by negligent maintenance activity. DOT’s maintenance history for Interstate 480 does not show any pothole repairs were needed between mileposts 22.8 and 23.0 during the time spanning August 1, 2008 to January 12, 2009.

{¶ 5} 5) Plaintiff filed a response disputing the veracity of DOT’s complaint records. Plaintiff explained “the same day of my pothole incident on I-480 I came into their office - District -12 Transportation office - and made a report.” Plaintiff pointed out his name and complaint report do not appear in any of the submitted DOT records. Based on this contention that he filed a complaint that was unreported, plaintiff expressed the opinion the DOT records are “unreliable” and believes DOT “may have known about the pothole prior to January 12, 2009.” Plaintiff observed “I feel that if my name/incident is not listed others may not have been listed on” defendant’s complaint records. Plaintiff did not provide any evidence to establish the length of time the pothole existed on Interstate 480 prior to 5:00 a.m. on January 12, 2009.

#### 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 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.

{¶ 8} 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.

{¶ 9} 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. 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. There is no evidence of constructive notice of the pothole.

{¶ 10} 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.

{¶ 11} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his 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.* (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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Michael B. Reed  
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RDK/laa  
4/22  
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