

# 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

GREGORY RAKEL

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-03339-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} “1) On January 29, 2009, at approximately 4:45 p.m., plaintiff, Gregory Rakel, was traveling northeast on Interstate 275 in Hamilton County, when his 2006 Chevrolet Cobalt struck a pothole causing substantial damage to the vehicle. Plaintiff located the pothole “approximately 50 Ft before milepost 25 northeast I 275 toward Cincinnati Oh.”

{¶ 2} “2) Plaintiff implied 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 hazards such as potholes. Plaintiff filed this complaint seeking to recover \$250.00, his insurance coverage deductible for automotive repair. The \$25.00 filing fee was paid.

{¶ 3} “3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff’s property damage event. Defendant denied receiving any previous reports of the particular pothole which DOT located at State milepost 25 on the entrance ramp to Interstate 275 in Hamilton County. Defendant suggested that, “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.” Defendant

asserted plaintiff failed to offer evidence to establish the length of time the damage-causing pothole existed prior to 4:45 p.m. on January 29, 2009.

{¶ 4} “4) Furthermore, defendant contended plaintiff failed to produce any evidence to prove his property damage was caused by negligent roadway maintenance. Defendant related “[p]laintiff has failed to introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct” of DOT caused his property damage. Defendant explained no pothole patching operations were conducted in the vicinity of milepost 25.0 on Interstate 275 in the six-month period preceding January 29, 2009 and routine inspections were conducted of that particular roadway area during the same period.

#### 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} Ordinarily in a claim involving roadway defects, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition 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} 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 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. There is no evidence DOT had actual notice of the pothole.

{¶ 8} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. 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 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:

Gregory Rake  
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RDK/laa  
6/8  
Filed 6/23/09  
Sent to S.C. reporter 10/22/09