

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

REBEKKAH BENNETT

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-04203-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 28, 2009, at approximately 8:40 a.m., plaintiff, Rebekkah Bennett, was traveling south on Interstate 75, “around 300-400 yards north of the Harrison Viaduct,” when her 2005 BMW 330 xi struck a pothole causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff asserted her that property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway free of hazardous conditions. Plaintiff filed this complaint seeking to recover \$838.51 for repair expenses, towing costs, and work loss associated with the March 28, 2009 incident. The filing fee was paid.

{¶ 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 near milepost 2.80 on Interstate 75 in Hamilton County. Defendant noted that plaintiff did not produce any evidence to

establish the length of time that the pothole was present on the roadway before 8:40 a.m. on March 28, 2009. 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.”

{¶ 4} 4) Furthermore, defendant argued that plaintiff failed to produce evidence to show the roadway was negligently maintained. Defendant explained that 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 at milepost 2.80 on Interstate 75 the last time that specific section of roadway was inspected prior to March 28, 2009. Defendant observed that if any DOT employees had found “any defects they would have been promptly scheduled for repair.” DOT records show that potholes were patched in the vicinity of plaintiff’s property damage incident on February 18, 2009.

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 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.

{¶ 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 that 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 that

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 that defendant had constructive notice of the pothole. 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. 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. Therefore, defendant is not liable for any damage that plaintiff may have suffered from the pothole.

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

REBEKKAH BENNETT

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-04203-AD

Clerk Miles C. Durfey

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.

MILES C. DURFEY
Clerk

Entry cc:

Rebekkah Bennett
3658 Brockton Drive
Cincinnati, Ohio 45251

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
8/10
Filed 9/30/09
Sent to S.C. reporter 1/22/10