

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

LINDA JOHNSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-04327-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 16, 2009, at approximately 6:40 a.m., plaintiff, Linda Johnson, was traveling east on Interstate 275 between milemarker 31.6 and 31.8 in Hamilton County, when her 1999 Chevrolet Cavalier struck a large pothole causing substantial damage.

{¶ 2} 2) Plaintiff asserted her 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 \$600.00, the cost she incurred for repairs. 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 between mileposts 31.6 and 31.8 on Interstate 275 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 6:40 a.m. on April 16, 2009.

{¶ 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 31.6 and 31.8 on Interstate 275 the last time that specific section of roadway was inspected prior to April 16, 2009. Defendant observed that if any DOT employees had “found any potholes they would have been repaired.” DOT records show potholes were patched in the vicinity of plaintiff’s property damage incident on November 14, 2008. Other submitted records indicate ODOT maintenance crews performed patching operations on this section of roadway on April 16, 2009, the day of plaintiff’s damage occurrence.

CONCLUSION 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 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.

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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:

Linda Johnson
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Harrison, Ohio 45030

Jolene M. Molitoris, Director
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RDK/laa
8/10
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