

[Cite as *Bell v. Ohio Dept. of Transp.*, 2002-Ohio-5402.]

IN THE COURT OF CLAIMS OF OHIO

AMY (ADAME) BELL	:	
202 W. Main Street	:	
New Concord, Ohio 43762	:	Case No. 2002-06618-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223
: : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On May 12, 2002, plaintiff, Amy Bell, was traveling south on Interstate 77 between Kimbolton and Cambridge in Guernsey County, when her pickup truck struck an "unknown object" laying on the traveled portion of the roadway. Plaintiff stated her vehicle's oil pan and gas tank were damaged as a result of striking the object.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$656.70, the cost of repairing her truck. Plaintiff asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee on July 22, 2002.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the object was on the roadway prior to plaintiff's

incident.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the object was present on the roadway surface prior to plaintiff's property damage occurrence.

CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶7} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the object 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} 4) There is no evidence defendant had actual notice of the damage-causing object.

{¶9} 5) The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence presented in respect to the time the defective condition (object) appeared. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (object) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing object.

{¶12} 8) Plaintiff has not submitted any evidence to prove

the roadway was negligently maintained.

{¶13} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶14} IT IS ORDERED THAT:

{¶15} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶16} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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