

[Cite as *Kipker v. Ohio Dept. of Hwy.*, 2002-Ohio-5898.]

IN THE COURT OF CLAIMS OF OHIO

MISTY L. KIPKER :  
2535 Twp. Rd. 182 :  
Bellefontaine, Ohio 43311 : Case No. 2002-07428-AD  
  
Plaintiff : MEMORANDUM DECISION  
  
v. :  
  
STATE DEPARTMENT OF HIGHWAY :  
  
Defendant :

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

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

FINDINGS OF FACT

{¶1} 1) On December 16, 2001, plaintiff, Misty L. Kipker, was traveling east on State Route 33 about ½ mile east of US 68 in Logan County, when her automobile struck an unidentified object in the traveled portion of the roadway. The object caused damage to plaintiff's vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$250.00, her insurance coverage deductible for automotive repair. Plaintiff asserted she sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the object was on the roadway.

{¶4} 4) Plaintiff has not presented any evidence to indicate the length of time the object was on the roadway prior to her proper-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 diligence in the 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 debris 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 object.

{¶9} 5) The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the object appeared on the roadway. *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 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) Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶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.

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DANIEL R. BORCHERT  
Deputy Clerk

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