

[Cite as *Kimmet v. Dept. of Transp.*, 2002-Ohio-7234.]

{¶3} Defendant has denied liability based on the fact it had no knowledge of the roadway defect prior to plaintiff's property damage occurrence.

{¶4} On November 8, 2002, plaintiff filed a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the roadway defect existed prior to the incident forming the basis of this claim.

CONCLUSIONS OF LAW

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

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

{¶8} 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 defective condition developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶9} Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287.

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

{¶11} No evidence has shown defendant had constructive notice of the defect.

{¶12} Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

DANIEL R. BORCHERT
Deputy Clerk

