

[Cite as *Gottfried v. Dept. of Transp.*, 2002-Ohio-7242.]

IN THE COURT OF CLAIMS OF OHIO

MARY M. GOTTFRIED	:	
60 Crestwood Drive	:	
Willard, Ohio 44890	:	Case No. 2002-08289-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
DEPARTMENT OF TRANSPORTATION	:	
DISTRICT 3	:	
Defendant	:	

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

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

FINDINGS OF FACT

{¶1} On August 12, 2002, plaintiff, Mary M. Gottfried, was traveling on State Route 547 near milepost 4 in Huron County, when her automobile struck a "small metal cover for a drainage pipe" laying on the traveled portion of the roadway. Plaintiff stated her automobile tire was damaged as a result of striking the metal debris.

{¶2} Plaintiff filed this complaint seeking to recover \$308.59, the cost of repairing her automobile. Plaintiff asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. On September 25, 2002, plaintiff submitted the filing fee.

[Cite as *Gottfried v. Dept. of Transp.*, 2002-Ohio-7242.]

{¶3} Defendant has denied liability based on the fact it had no knowledge the metal debris existed on the roadway prior to plaintiff's incident.

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

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} 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} 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 negligence manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶8} There is no evidence defendant had actual notice of the damage-causing object.

{¶9} 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 (metal object) appeared. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

[Cite as *Gottfried v. Dept. of Transp.*, 2002-Ohio-7242.]

{¶10} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the danger condition (metal object) 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 damage-causing metal object.

{¶12} Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

DANIEL R. BORCHERT
Deputy Clerk

[Cite as *Gottfried v. Dept. of Transp.*, 2002-Ohio-7242.]