

IN THE COURT OF CLAIMS OF OHIO

LAWRENCE H. SNYDER	:	
10785 Oxford Road	:	
Harrison, Ohio 45030	:	Case No. 2002-08726-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 August 4, 2002, at approximately 11:20 a.m., Lawrence H. Snyder, was towing a horse trailer with his pick-up truck on U.S. Route 50 between Hoover Avenue and Kilby Road in Hamilton County, when his trailer struck potholes causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$299.38, the cost of trailer repair which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

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

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the potholes existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show eight pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-month period preceding plaintiff's property damage event.

CONCLUSIONS OF LAW

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

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

{¶9} 4) 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 conditions (potholes) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 5) Size of the defects (potholes) are insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297.

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

{¶12} 7) No evidence has shown defendant had constructive notice of the potholes.

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

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

{¶15} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

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