

[Cite as *Griffin v. Ohio Dept. of Transp.*, 2003-Ohio-2433.]

IN THE COURT OF CLAIMS OF OHIO

CATHY GRIFFIN	:	
Plaintiff	:	
v.	:	CASE NO. 2002-09021-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶1} 1) On September 25, 2002, plaintiff, Cathy Griffin, was traveling on Interstate 71 at milepost 1.4 in Hamilton County, when her automobile struck a tire laying on the traveled portion of the roadway. Plaintiff stated her automobile was substantially damaged as a result of striking the tire.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$756.00, the total 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. Plaintiff submitted the filing fee with the complaint.

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

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the tire was on the roadway surface prior to her 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 debris (tire) 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 tire.

{¶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 debris 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 debris(tire) 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 tire.

{¶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

Entry cc:

Cathy Griffin Plaintiff, Pro se
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RDK/laa
4/17
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