

[Cite as *Kill v. Ohio Dept. of Transp.*, 2003-Ohio-2620.]

IN THE COURT OF CLAIMS OF OHIO

RONALD J. KILL

Plaintiff

V.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

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FINDINGS OF FACT

{¶1} On December 31, 2002, at approximately 6:30 p.m., plaintiff, Ronald J. Kill, was traveling east on State Route 309 between Elida and Lima near the Gordon Food Service store in Allen County when his automobile struck a massive pothole causing substantial damage to the vehicle. Plaintiff filed this complaint seeking to recover \$349.91 for automotive repair. Plaintiff also seeks recovery of the \$25.00 filing fee. Plaintiff contends he sustained these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in failing to repair a known dangerous roadway condition.

{¶2} Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant explained it first received actual notice of the pothole at approximately 7:30 p.m. on December 31, 2002.

{¶3} Evidence submitted in another claim has established the pothole on State Route 309 was observed at approximately 12:30 p.m. on December 31, 2002. See *Sheaks v. Ohio Department of Transportation* (2003), 2003-02179-AD. The pothole plaintiff's car struck had appeared at least six hours prior to the incident forming the basis

of this claim.

CONCLUSIONS OF LAW

{¶4} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Ohio Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. 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.

{¶6} 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. 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. In the instant claim, plaintiff has produced evidence to establish constructive notice of the defect on the part of defendant. This pothole condition was present for more than six hours prior to plaintiff's damage event. Sufficient time had elapsed for defendant to have been aware of the pothole and taken measures to initiate repairs. Since constructive notice has been shown, defendant is, consequently, liable to plaintiff for all damages claimed.

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

{¶8} IT IS ORDERED THAT:

{¶9} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶10} 2) Defendant (Department of Transportation) pay plaintiff (Ronald J. Kill)
\$374.94 and such interest as is allowed by law;

{¶11} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Order cc:

Ronald J. Kill Plaintiff, Pro se.
1203 Gilliland Avenue
Delphos, Ohio 45833

Gordon Proctor, Director
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For Defendant

RDK/laa
4/17
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