

[Cite as *Burgei v. Ohio Dept. of Transp.*, 2003-Ohio-2623.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS V. BURGEI	:	
Plaintiff	:	
v.	:	CASE NO. 2003-01580-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On January 10, 2003, plaintiff's wife, Tina Burgei, was driving plaintiff's truck on State Route 65 from Ottawa to Lima, when the vehicle struck a broken road reflector laying on the traveled portion of the roadway. Plaintiff, Dennis V. Burgei, stated the truck's tire was damaged as a result of striking the broken reflector.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$138.65, the cost of a replacement tire, plus \$25.00 for filing fee reimbursement. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff suggested the reflector was broken when defendant conducted roadway snow plowing operations on January 8, 2003.

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

{¶4} 4) Plaintiff has failed to establish the reflector was broken due to defendant's plowing operations.

{¶5} 5) Plaintiff has not submitted any evidence to indicate the length of time the broken reflector was on the roadway surface prior to his property damage occurrence.

CONCLUSIONS OF LAW

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

{¶7} 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.

{¶8} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (broken reflector) 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.

{¶9} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

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

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

{¶12} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

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

{¶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

Entry cc:

Dennis V. Burgei
229 Kennedy Street (Glandorf)
Ottawa, Ohio 45875

Plaintiff, Pro se

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

For Defendant

RDK/laa
4/17
Filed 5/8/03
Sent to S.C. Reporter 5/20/03