

[Cite as *Lewis v. Ohio Dept. of Transp.*, 2003-Ohio-2981.]

IN THE COURT OF CLAIMS OF OHIO

BARRY LEWIS, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2003-02870-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶1} 1) On February 20, 2003, plaintiff, Barry Lewis was traveling on State Route 166 west of State Route 86 in Geauga County, when his truck struck a broken road reflector laying on the traveled portion of the roadway. Plaintiff stated two of his truck tires were damaged as a result of striking the broken reflector.

{¶2} 2) Plaintiffs filed this complaint seeking to recover \$126.60, the cost of replacement tires. Plaintiffs assert they incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiffs submitted the filing fee with the complaint.

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

{¶4} 4) On April 18, 2003, plaintiffs filed a response to the defendant's investigation report. Plaintiffs suggest the reflector had been loosened by previous snow plowing operations conducted by defendant's personnel. Plaintiffs did not submit any

additional corroborating evidence to support this suggestion.

{¶5} 5) Plaintiffs have not submitted any evidence to indicate the length of time the loosened reflector was on the roadway surface prior to their 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 diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Dept.* (1985), 85-02071-AD.

{¶8} 3) In order to recover on a claim of this type, plaintiffs 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 loosened 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 (loosened reflector) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶11} 6) In order for there to be constructive notice, plaintiffs must show sufficient time has elapsed after the dangerous condition (loosened 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) Plaintiffs have 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) Plaintiffs' 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:

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