

[Cite as *Balton v. Ohio Dept. of Transp.*, 2003-Ohio-3113.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL J. BALTON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-01857-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 8	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On December 23, 2002, plaintiff, Daniel J. Balton, was traveling north on Interstate 75 at milepost 8.50 in Butler County, when his truck struck a metal plate protruding from an expansion joint on the traveled portion of the roadway. Plaintiff stated his vehicles tire and running board was damaged as a result of striking the protruding metal plate.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$377.40, the cost of repairing his vehicle, plus a claim 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.

{¶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 not submitted any evidence to indicate the length of time the metal plate was protruding from the expansion joint on the roadway prior to his 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 Dept.* (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 defect 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 condition.

{¶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 defective condition developed. *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 dangerous condition 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 condition.

{¶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, for reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of the defendant. Court costs shall be absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Daniel J. Balton Plaintiff, Pro se
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For Defendant

RDK/tad
5/16
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