

[Cite as *Sowards v. Ohio Dept. of Transp.*, 2003-Ohio-3568.]

IN THE COURT OF CLAIMS OF OHIO

KAREN S. SOWARDS	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02764-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 8	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On January 26, 2003, plaintiff, Karen S. Sowards, was traveling west on State Route 32 near milepost 7.70 in Clermont County when her automobile struck a piece of roadway pavement causing tire and wheel damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$510.42, the cost replacement parts, plus \$25.00 for filing fees, which plaintiff contends she incurred as a result 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 deteriorated pavement prior to plaintiff's property damage occurrence.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the condition existed prior to the incident forming the basis of this claim.

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) 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.

{¶7} 3) There is no evidence that defendant had actual notice of the damage-causing deteriorated pavement condition.

{¶8} 4) 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.

{¶9} 5) 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.

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after 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 deteriorated pavement condition.

{¶12} 8) Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶13} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of 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:

Karen S. Sowards Plaintiff, Pro se
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RDK/tad
5/15
Filed 6/11/03
Sent to S.C. reporter 7/3/03