

[Cite as *Klingensmith v. Ohio Dept. of Transp.*, 2003-Ohio-3905.]

IN THE COURT OF CLAIMS OF OHIO

LUCINDA C. KLINGENSMITH	:	
Plaintiff	:	
v.	:	CASE NO. 2003-05151-AD
OHIO DEPARTMENT OF TRANSPORTATION, REGION 4	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) On February 23, 2003, plaintiff, Lucinda C. Klingensmith, was traveling south on Interstate 77 between mileposts 106 and 107 in Stark County when her automobile struck a pothole causing tire damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$194.25, the cost of automotive repair 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 of the pothole prior to plaintiff's property damage occurrence.

{¶4} 4) Plaintiff submitted evidence to indicate the pothole existed for at least forty-five minutes prior to the incident forming the basis of this claim.

{¶5} 5) Defendant asserted maintenance records show two pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-week period preceding plaintiff's property damage event.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has the duty to keep roads in a safe, drivable condition.

*Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

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

{¶9} 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 (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 5) Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287.

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

{¶12} 7) Insufficient evidence has been presented to prove defendant had constructive notice of the pothole.

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

{¶14} 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 are assessed against plaintiff. 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:

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For Defendant

RDK/laa  
7/7  
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