

[Cite as *Beranek v. Ohio Dept. of Transp.*, Dept. 8, 2003-Ohio-5479.]

IN THE COURT OF CLAIMS OF OHIO

MARY ANN BERANEK	:	
Plaintiff	:	
v.	:	CASE NO. 2003-07103-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 8	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On June 16, 2003, plaintiff, Mary Ann Beranek, was traveling southbound on State Route 747 and entered eastbound I275, when she struck a pothole in the traveled portion of the roadway on the entrance ramp. Striking the pothole caused damage to her vehicle.

{¶2} 2) Plaintiff filed this complaint indicating her repair bill plus car rental amounted to \$630.97. She indicated that a claim was submitted to her insurance carrier which paid \$80.00 and her policy had a \$500.00 deductible. Accordingly, she seeks damages in the amount of \$550.97 plus reimbursement of the filing fee she submitted with the complaint. Plaintiff contends the automotive damage was the result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) On August 18, 2003, plaintiff filed a motion to expedite a decision in her case.

{¶4} 4) Defendant has denied liability based on the fact it had no knowledge the pothole existed.

{¶5} 5) On September 9, 2003, plaintiff filed a response to defendant's

investigation report. Plaintiff offers no evidence with respect to the time the pothole developed. She questions how anyone could know the time a pothole formed.

{¶6} 6) Plaintiff asserts she notified the Springdale Police after the incident and they in turn notified the defendant concerning the pothole. However, plaintiff has not presented any evidence to indicate the length of time the pothole was on the roadway prior to her property damage occurrence.

CONCLUSIONS OF LAW

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

{¶8} 2) Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶9} 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 (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.

{¶10} 4) There is no evidence defendant had actual notice of the pothole.

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

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

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

{¶14} Plaintiff's motion to expedite is GRANTED. 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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Plaintiff, Pro se

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For Defendant

DRB/laa
9/5
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