

[Cite as *Hudson v. Ohio Dept. of Transp.*, 2003-Ohio-5555.]

IN THE COURT OF CLAIMS OF OHIO

SHAWN M. HUDSON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-06298-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶1} 1) On March 17, 2003, plaintiff, Shawn M. Hudson, was traveling south on State Route 226 about ½ mile from Centerville when his motorcycle struck a massive pothole causing substantial damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$660.77, the cost of motorcycle repair which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint. Plaintiff indicated he received payment from his insurer for repair costs.

{¶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} THE COURT CONCLUDES THAT:

{¶5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transp.* (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 (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.

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

{¶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 (pothole) 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 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.

{¶11} 7) No evidence has shown defendant had constructive notice of the pothole.

{¶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 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:

Shawn M. Hudson
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Shreve, Ohio 44676

Plaintiff, Pro se

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For Defendant

RDK/laa
9/16
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