

[Cite as *Stinson v. Ohio Dept. of Transp.*, 2003-Ohio-6025.]

IN THE COURT OF CLAIMS OF OHIO

RUSSELL C. STINSON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-06344-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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{¶1} On May 3, 2003, at approximately 8:30 p.m., plaintiff, Russell C. Stinson, was traveling west on State Route 113 between Quarry and Baumhart Roads in the village of South Amherst when his automobile struck a pothole in the traveled portion of the roadway. The pothole caused tire and rim damage to plaintiff's vehicle. Plaintiff filed this complaint seeking to recover \$250.00 his insurance coverage deductible for automotive repair. Plaintiff is limited to any damage recovery for actual expenses he incurred pursuant to the constraints of R.C. 2743.02(D).<sup>1</sup> Plaintiff asserted his car was damaged as a proximate cause of negligence on the part of defendant, Department of Transportation, in failing to repair a hazardous condition on the roadway.

{¶2} Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant located the pothole at about milepost 4.5 on State Route 113 in Lorain County. Defendant asserted no calls or complaints about a pothole at milepost 4.5 on State Route 113 were

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<sup>1</sup> R.C. 2743.02(D) states in pertinent part:  
"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant."

received prior to May 3, 2003. In fact, defendant related it did not know about plaintiff's claim until June 2, 2003 when plaintiff filed his complaint. Defendant also related a pothole at milepost 4.5 on State Route 113 was repaired by Department of Transportation personnel on May 7, 2003. Defendant explained its county manager conducts roadway inspections on State Route 113 at least one to two times a month. Apparently, the roadway inspection of State Route 113 during April 2003 did not discover a roadway defect at milepost 4.5.

{¶3} Evidence in other claims involving the same pothole on State Route 113 has indicated the roadway defect presented a hazardous condition on Route 113 at the end of April, 2003. See *Tapper v. Ohio Department of Transportation* (2003), 2003-06191-AD; *Meredith v. Ohio Department of Transportation* (2003), 2003-06361-AD. The evidence produced establishes the pothole plaintiff's car struck had appeared many days prior to the incident forming the basis of this claim.

{¶4} Defendant has the duty to maintain its highways in a reasonable safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. 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.

{¶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. Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set time standard for the discovery of certain road hazards." *Bussard*, supra, at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb 4, 1993), Franklin App. No. 92AP-1183.

{¶7} In the instant claim, evidence has shown defendant had constructive notice of the pothole on State Route 113. This pothole condition was present for many days prior to plaintiff's damage event. The trier of fact finds sufficient time had elapsed for defendant to have discovered the pothole and taken some measure to protect motorists from the dangerous condition. Since constructive notice has been established, defendant is liable for plaintiff's insurance coverage deductible, plus filing fees, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶8} 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 plaintiff in the amount of \$275.00, which includes the filing fee. Court costs are assessed against defendant. 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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RDK/laa

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