

[Cite as *Summers v. Ohio Dept. of Transp.*, 2003-Ohio-6428.]

IN THE COURT OF CLAIMS OF OHIO

GEORGE P. SUMMERS, JR. :
Plaintiff :
v. : CASE NO. 2003-07006-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) At approximately 6:50 p.m., on June 1, 2003, plaintiff, George P. Summers, Jr., was traveling east onto State Route 224 at milepost 17.83 in Mahoning County, when his truck ran over a loosened manhole cover causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,232.39, the cost for automotive repair. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the loosened manhole cover.

{¶4} 4) Plaintiff has not submitted any evidence to establish the length of time the loose manhole cover condition was present prior to his property-damage occurrence.

CONCLUSIONS OF LAW

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

{¶6} 2) Defendant must exercise due diligence in the maintenance and repair

of highways. *Hennessey v. State of Ohio Highway Dept.* (1985), 85-02071-AD.

{¶7} 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 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. Ohio Dept. of Transp.* (1976), 75-0287-AD.

{¶8} 4) There is no evidence defendant had actual notice of the damage-causing loosened manhole cover.

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

{¶10} 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.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing loosened manhole cover.

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

{¶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:

George P. Summers, Jr.
930 Montgomery Avenue
E. Liverpool, Ohio 43920

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa
10/16
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