[Cite as *Ray v. Ohio Dept. of Transp.*, 2004-Ohio-1350.]

IN THE COURT OF CLAIMS OF OHIO

RYAN C. RAY	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11160-AD
OHIO DEPT. OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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

FINDINGS OF FACT

{¶1} 1) On October 21, 2003, plaintiff, Ryan C. Ray, was traveling north on Interstate 680 near milepost 9.23 in Mahoning County when a preceding motorist struck a broken dislodged center line reflector and propelled the reflector into the path of plaintiff's vehicle. The reflector then struck plaintiff's car and became embedded.

{¶2} 2) Plaintiff filed this complaint seeking to recover $1,268.92, the cost of automotive repair and related expenses, which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant denied liability based on the fact it had no knowledge the reflector was broken and detached prior to plaintiff's property-damage occurrence. Defendant asserted its employees conducted inspection operations in the area of plaintiffs' incident on many occasions prior to October 21, 2003, and did not discover any loose pavement markers.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the reflector was defective prior to the incident forming the basis of this claim.

CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (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 dislodged reflector 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 loose pavement marker.

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

{¶9} 5) 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.

{¶10} 6) No evidence has shown defendant had constructive notice of the loose pavement marker.

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

{¶12} 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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Ryan C. Ray
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Plaintiff, Pro se

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For Defendant

DRB/RDK/laa
2/23
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