

IN THE COURT OF CLAIMS OF OHIO

ANN L. FERGUSON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11500-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶1} On November 12, 2003, plaintiff, Ann L. Ferguson, was traveling west on Interstate 480 near milepost 9.43 in Cuyahoga County, when her van struck a tire laying on the traveled portion of the roadway. The tire caused extensive damage to plaintiff's vehicle.

{¶2} Plaintiff filed this complaint seeking to recover \$2,113.80, the entire cost for automotive repair. Plaintiff asserted she 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} Defendant has denied liability based on the fact it had no knowledge the tire was on the roadway.

{¶4} On January 12, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff has not presented any evidence to indicate the length of time the tire was on the roadway prior to her property-damage occurrence.

CONCLUSIONS OF LAW

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

{¶6} 2) Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. Ohio Hwy. 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 tire 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. Dept. of Transp.* (1976), 75-0287-AD.

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

{¶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 tire appeared on the roadway. *Spires v. Hwy. 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 tire 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 tire.

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

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ANN L. FERGUSON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11500-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
.....	:	

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/RDK/laa
2/25
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