

[Cite as *Westrich v. Ohio Dept. of Transp.*, 2004-Ohio-2292.]

IN THE COURT OF CLAIMS OF OHIO

BRIAN M. WESTRICH :
Plaintiff :
v. : CASE NO. 2004-01591-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On January 16, 2004, plaintiff, Brian M. Westrich, was traveling west on Interstate 74 near the Dry Fork Road exit in Hamilton County, when his automobile struck potholes causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$128.35, the cost of automotive 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 \$25 filing fee and is also seeking recovery of that amount.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the potholes prior to plaintiff's property damage occurrence.

{¶4} 4) On March 10, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the potholes

existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show three pothole patching operations were needed in the general vicinity of plaintiff's incident during the four-month period preceding the January 16, 2004, property damage event.

CONCLUSIONS OF LAW

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

{¶7} 2) In order to recover on a claim of this type, plaintiff must prove either: (1) defendant had actual or constructive notice of the defects (potholes) 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} 3) There is no evidence defendant had actual notice of the damage-causing potholes.

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

{¶10} 5) Size of the defects (potholes) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297.

{¶11} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after dangerous conditions (potholes) appear, so that under the circumstances, defendant should have acquired knowledge of the existence of the defects. *Guiher v. Jackson* (1978), 78-0126-AD.

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

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

{¶14} 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:

Brian M. Westrich
7466 Zion Hill Road
Cleves, Ohio 45002-9694

Plaintiff, Pro se

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

For Defendant

DRB/RDK/laa
3/26
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