

IN THE COURT OF CLAIMS OF OHIO

ANDREW GEILINGER :
Plaintiff :
v. : CASE NO. 2004-02211-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On February 3, 2004, plaintiff, Andrew Geilinger, was traveling west on Interstate 70 about a quarter mile past exit 213 in Belmont County, when his automobile struck a pothole causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,210.00, 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 filing fee.

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

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

{¶5} 5) Defendant has asserted maintenance records show one pothole patching operation was needed in the general vicinity of

plaintiff's incident during the two-month period preceding the February 3, 2004, property damage event.

{¶6} 6) On April 19, 2004, plaintiff submitted a response to defendant's investigation report. Plaintiff asserted the pothole his car struck must have existed for a substantial amount of time due to the large size of this roadway defect.

{¶7} 7) Plaintiff related he was informed by an employee of the Ohio State Highway Patrol, identified as Trooper Brown, that he had received "numerous reports from other motorists regarding numerous potholes on I-70."

CONCLUSIONS OF LAW

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

{¶9} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (pothole) 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.

{¶10} 3) There is no evidence defendant had actual notice of the damage-causing pothole.

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

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

{¶13} 6) In order for there to be constructive notice, plaintiff

must show sufficient time has elapsed after dangerous condition (pothole) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

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

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

{¶16} 9) Notice of a highway defect given to the State Highway Patrol does not constitute actual notice of the defect to defendant. *McClellan v. Ohio Dept. of Transp.* (1986), 34 Ohio App. 3d 247.

{¶17} 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:

Andrew Geilinger
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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

DRB/RDK/laa

4/28

Filed 5/7/04

Sent to S.C. reporter 6/3/04