

[Cite as *Large v. Ohio Dept. of Transp., Dist. 4, 2004-Ohio-3587.*]

IN THE COURT OF CLAIMS OF OHIO

DAVID LEE LARGE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-02474-AD
OHIO DEPT. OF TRANSPORTATION, DISTRICT 4	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On February 12, 2004, plaintiff, David Lee Large, was traveling west on State Route 172 near Moultrie in Columbiana County, when his automobile struck a pothole causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$384.36, 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 \$25.00 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 pothole prior to plaintiff's property damage occurrence.

{¶4} 4) On June 2, 2004, plaintiff filed a response to defendant's investigation report. However, 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. Plaintiff submitted two newspaper articles about potholes in the vicinity of plaintiff's damage-causing incident. However, the copies of the newspapers plaintiff provided did not have a date visible so this court could not determine if the articles were written prior to or after plaintiff's encounter with a pothole.

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{¶5} 5) Defendant has asserted maintenance records show two pothole patching operations were needed in the general vicinity of plaintiff's incident during the three-month period preceding the February 12, 2004, property damage event.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (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 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.

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

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

{¶10} 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.

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

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

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

David Lee Large
1520 Baycrest Drive N.W.
Canton, Ohio 44708

Plaintiff, Pro se

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

For Defendant

DRB/RDK/laa
6/8
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