

[Cite as *Smalley v. Ohio Dept. of Transp.*, 2004-Ohio-6147.]

IN THE COURT OF CLAIMS OF OHIO

JOHN K. SMALLEY

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Plaintiff

$$\vdots$$

V.

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CASE NO. 2004-05945-AD

OHIO DEPARTMENT OF
TRANSPORTATION

:

MEMORANDUM DECISION

$$\vdots$$

Defendant

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FINDINGS OF FACT

¶ 1) On April 24, 2004, plaintiff, John K. Smalley, was traveling east on State Route 62 near milepost 2.10 in Stark County, when his motorcycle struck a pothole causing damage to the vehicle. Plaintiff submitted photographic evidence depicting the pothole, which was massive.

¶ 2) Plaintiff filed this complaint seeking to recover \$1,060.31, the cost of vehicle 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.

{¶ 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 five pothole patching operations were needed in the general vicinity of plaintiff's incident during the four-month period preceding the April 24, 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 the dangerous condition (pothole) appears, so that under the circumstances, defendant should have acquired knowledge of the existence of the defect. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶ 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.

IN THE COURT OF CLAIMS OF OHIO

JOHN K. SMALLEY :

Plaintiff :

V. : CASE NO. 2004-05945-AD

OHIO DEPARTMENT OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant

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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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RDK/laa
10/14
Filed 10/22/04
Sent to S.C. reporter 11/17/04