[Cite as *Purdy v. Ohio Dept. of Transp., Div. 2*, 2004-Ohio-7082.]

IN THE COURT OF CLAIMS OF OHIO

TIMMY H. PURDY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-04248-AD
OHIO DEPARTMENT OF TRANSPORTATION, DIV. 2	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Timmy H. Purdy, stated he was traveling south on State Route 199 near 15900 McCutcheonville Road on March 19, 2004, at approximately 10:53 p.m., when his vehicle struck a loose steel reflector box laying on the roadway. Plaintiff related his vehicle sustained substantial damage from striking the loose reflector box. Plaintiff submitted documentary evidence in the form of an "Event Report" from the Wood County Sheriff's Office regarding an earlier incident at 15900 McCutcheonville Road where a patrol vehicle from the Wood County Sheriff struck the same reflector box plaintiff's vehicle struck. This earlier incident involving tire damage to the patrol vehicle occurred on March 19, 2004, at approximately 10:00 p.m.

{¶2} 2) Plaintiff contended defendant, Department of Transportation (DOT), should bear liability for his property damage. Plaintiff asserted defendant maintained a known hazardous condition on the roadway. Consequently, plaintiff filed this

complaint seeking to recover $1,097.81, the total cost of automotive repair resulting from the March 19, 2004, incident. The requisite material filing fee was paid.

{¶1} 3) Defendant located plaintiff's property damage occurrence at milepost 16.75 on State Route 199 in Wood County. Defendant asserted it did not have any knowledge of a loose reflector on State Route 199 before the incident forming the basis of this claim. Defendant submitted copies of DOT radio logs from the Wood County Garage for March 19, and March 20, 2004. Defendant did not receive any radio reports of a loose reflector on State Route 199 near milepost 16.75. Defendant suggested the loose road reflector condition, "existed in that location for only a relatively short period of time before plaintiff's incident."

{¶2} 4) Defendant argued plaintiff failed to produce evidence to establish his property damage was caused by any negligence on the part of DOT personnel in maintaining State Route 199. DOT conducted litter patrol operations near milepost 16.75 on State Route 199 on March 9, 2004, ten days prior to plaintiff's property damage event. No loose roadway reflectors were noticed during this litter patrol operation. Furthermore, DOT crews performed snow removal activities on State Route 199 on March 11, and 17, 2004. Defendant does not believe the snow removal activities caused the loosened roadway reflector condition which damaged plaintiff's vehicle. Additionally, defendant related DOT has a statutory duty to do whatever is necessary to remove snow from roadways and suggested this duty grants DOT immunity from liability for any damages which may be proximately caused from these snow removal operations.

CONCLUSIONS OF LAW

{¶3} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio*

Department of Transportation (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶4} The duty to remove snow and ice does not supersede the duty to repair pavement defects. The duty to repair defects and the duty to remove roadway snow are concurrently equivalent duties. *Farmer v. Department of Transportation* (1999), 99-02931-AD jud; *Kirschner v. Department of Transportation* (1999), 99-04542-AD jud. The fact defendant chooses to engage its work force in snow and ice removal is not a defense to failure to timely repair roadway defects. *Lewis v. Ohio Department of Transportation* (1999), 99-02566-AD.

{¶5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. 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 developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶6} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set-time standards for the discovery of certain road hazards."

Bussard, supra, at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb. 4, 1993), Franklin App. No. 92AP-1183.

{¶7} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (loose reflector box) 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. In the instant claim, plaintiff has offered sufficient evidence to prove constructive notice of the defective condition. Evidence has shown the damage-causing reflector was on the roadway for almost an hour or more before plaintiff's incident. This time elapse is adequate to prove constructive notice. See *Piscioneri v. Ohio Dept. of Transportation, Division 12* (2003), 2002-10836-AD jud. Consequently, defendant is liable to plaintiff for the damage claimed.

IN THE COURT OF CLAIMS OF OHIO

TIMMY H. PURDY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-04248-AD
OHIO DEPARTMENT OF TRANSPORTATION, DIV. 2	:	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 plaintiff in the amount

of $1,122.81, which includes the filing fee. Court costs are assessed against defendant. 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:

Timmy H. Purdy
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Plaintiff, Pro se

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For Defendant

RDK/laa
9/28
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