

[Cite as *Fink v. Ohio Dept. of Transp., Dist. 11, 2004-Ohio-7088.*]

IN THE COURT OF CLAIMS OF OHIO

NOAH THOMAS FINK :  
Plaintiff :  
v. : CASE NO. 2004-07786-AD  
OHIO DEPARTMENT OF : MEMORANDUM DECISION  
TRANSPORTATION, DISTRICT 11 :  
Defendant :  
:.....:

FINDINGS OF FACT

{¶1} 1) On July 23, 2004, plaintiff, Noah T. Fink, was traveling on State Route 11 near milepost 24.17 in Columbiana County, when his automobile struck a large pothole causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$617.23, 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. The \$25.00 filing fee was paid.

{¶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 October 7, 2004, plaintiff submitted a response to defendant's investigation report. Although plaintiff submitted a police report, 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. The police report indicates defendant was notified after the damage-causing incident occurred.

{¶5} 5) Defendant has asserted maintenance records show no pothole patching operation were needed in the general vicinity of plaintiff's incident during the six-month period prior to the July 23, 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 its existence. *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.

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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE  
TRANSPORTATION, DISTRICT 11 : 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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DRB/RDK/laa  
10/14  
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