

[Cite as *Nyeste v. Ohio Dept. of Transp.*, 2005-Ohio-2042.]

IN THE COURT OF CLAIMS OF OHIO

MARY ANNE NYESTE :
Plaintiff :
v. : CASE NO. 2005-01021-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} On November 21, 2004, at approximately 7:15 p.m., plaintiff, Mary Anne Nyeste, was traveling on the Interstate 270 West entrance ramp from US Route 23 North in Franklin County when her automobile struck a pothole causing tire and wheel damage to the vehicle.

{¶2} Plaintiff filed this complaint seeking to recover \$354.48, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant acknowledged receiving a complaint about the pothole at approximately 8:00 p.m. on November 21, 2004. Defendant related the pothole was promptly repaired after this complaint was received.

{¶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} Defendant has asserted maintenance records show seven pothole patching operations were needed in the general vicinity of plaintiff's incident during the four-month period prior to the November 21, 2004, property damage event.

CONCLUSIONS OF LAW

{¶6} Defendant has the duty to maintain its highway 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 the safety 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.

{¶7} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the 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. 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.

{¶8} Plaintiff has not produced any evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the pothole. Additionally, 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 pothole appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d

262. There is no indication defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶9} Plaintiff has not shown by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

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IN THE COURT OF CLAIMS OF OHIO

MARY ANNE NYESTE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01021-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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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Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
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For Defendant

Sent to S.C. reporter 4/29/05