[Cite as *McHugh v. Ohio Dept. of Transp., Dist. 7*, 2005-Ohio-3532.]

IN THE COURT OF CLAIMS OF OHIO

JAMES P. MCHUGH :

Plaintiff :

v. : CASE NO. 2005-03903-AD

OHIO DEPT. OF TRANSPORTATION, DIST. #7 : MEMORANDUM DECISION

:

Defendant

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On January 14, 2005, at approximately 8:00 a.m., plaintiff, James P. McHugh was traveling north on Interstate 75 at Dryden Road in Moraine, Ohio, when his automobile struck a "very deep pothole" causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover $842.85, the cost of automotive repair and related costs 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. There is some evidence defendant received a call about the pothole on Interstate 75 from the Moraine Police Department at 7:30 a.m. on January 14, 2005.

{¶ 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 no

pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-month period preceding the January 14, 2005, 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 evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole for a sufficient length of time to invoke liability. 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. 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

IN THE COURT OF CLAIMS OF OHIO

JAMES P. MCHUGH	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03903-AD
OHIO DEPT. OF TRANSPORTATION, DIST. #7	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

: : : : : : : : : : : : : : : : :

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:

James P. McHugh
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Plaintiff, Pro se

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For Defendant

RDK/laa
6/9
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