

[Cite as *Malloy v. Ohio Dept. of Transp.*, 2005-Ohio-3971.]

IN THE COURT OF CLAIMS OF OHIO

ALLY L. MALLOY :
Plaintiff :
v. : CASE NO. 2005-03962-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION, DISTRICT 8 :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On February 10, 2005, at approximately 5:00 p.m., plaintiff, Ally L. Malloy, was traveling north on Interstate 75 to Interstate 275 West, when her automobile struck a massive pothole causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$893.08, her total cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation("DOT"), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant suggested the pothole plaintiff's car struck probably existed "for only a relatively short amount of time before the time of the incident." Defendant denied receiving any prior complaints about the pothole which DOT located at "mileposts 16.8 on I-75 and milepost 43.32 on I-275 in Hamilton County."

{¶ 4} 4) Plaintiff did not submit any evidence to establish the

length of time the pothole existed prior to the February 10, 2005, property damage event.

{¶ 5} 5) Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

CONCLUSIONS OF LAW

{¶ 6} 1) 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 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} 2) 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.

{¶ 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.

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