

[Cite as *Schwendeman v. Ohio Dept. of Transp.*, 2005-Ohio-4634.]

IN THE COURT OF CLAIMS OF OHIO

DARLA SCHWENDEMAN :
Plaintiff :
v. : CASE NO. 2005-05531-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On March 28, 2005, at approximately 7:05 p.m., plaintiff, Darla Schwendeman, was traveling south on US Route 50 near milepost 4.04 in Washington County, when her automobile struck a pothole in the middle of the roadway. The impact of striking the pothole resulted in tire and rim damage to plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$355.84, 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 plaintiff's incident."

{¶ 4} 4) Defendant submitted a copy of a complaint log showing potholes were reported on US Route 50 in Washington County on March 28, 2005, at approximately 12:00 a.m. On March 25, 2005, DOT

employee Jason Brownrigg conducted a roadway inspection of US Route 50 and did not discover any potholes.

{¶ 5} 5) In her response to defendant's investigation report, plaintiff related the pothole her car struck was a previously repaired defect and the repair patch had deteriorated. Plaintiff suggested the damage-causing pothole had been negligently repaired.

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. Defendant, in the instant claim, had actual notice of the pothole on US Route 50. Evidence has established DOT had notice of this damage causing defect for multiple hours before plaintiff's incident. Defendant had ample time and opportunity to respond and institute measures to rectify the condition. Plaintiff has proven defendant breached its duty of care to maintain the roadway. Defendant is therefore liable to plaintiff for her property damage based on the actual notice rationale expressed in *Denis*, supra. ¶

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TRANSPORTATION : 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 plaintiff in the amount of \$380.84, 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:

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Plaintiff, Pro se

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For Defendant

DRB/RDK/laa
7/26
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