

[Cite as *Piatt v. Ohio Dept. of Transp.*, 2005-Ohio-4642.]

IN THE COURT OF CLAIMS OF OHIO

JIMMY DALE PIATT	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06902-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
: : : : : : : : : : : : : : : :		

FINDINGS OF FACT

{¶ 1} 1) On January 17, 2005, plaintiff, Jimmy Dale Piatt, was traveling west on State Route 78 at milepost 7.10 in Monroe County, when his vehicle struck an uprooted road reflector laying on the traveled portion of the roadway. Plaintiff stated the tire and rim of his vehicle were damaged as a result of striking the reflector.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$310.68, his expense incurred for replacement parts. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff paid the filing fee.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶ 4} 4) On July 7, 2005, plaintiff submitted a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the loosened road reflector was on the roadway surface prior to the January 17, 2005, property damage occurrence. Plaintiff suggested the reflector was uprooted by defendant conducting snow removal

operations on State Route 78. Plaintiff did not submit any evidence to establish the damage-causing reflector was loosened by snow removal activities.

CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶ 6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶ 7} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (reflector) 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} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

{¶ 9} 5) 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 (reflector) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (loosened reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶ 11} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶ 12} 8) Plaintiff has not submitted any evidence to prove

the roadway was negligently maintained.

IN THE COURT OF CLAIMS OF OHIO

JIMMY DALE PIATT	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06902-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
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:

Jimmy Dale Piatt
325 Guilford Avenue
Woodsfield, Ohio 43793

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

Sent to S.C. reporter 9/2/05