

[Cite as *Dombrosky v. Ohio Dept. of Transp.*, 2005-Ohio-6120.]

IN THE COURT OF CLAIMS OF OHIO

JEAN F. DOMBROSKY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07119-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On February 15, 2005, at approximately 3:45 p.m., Lisa Dombrosky was traveling on Interstate 90 near the Route 57 exit (milepost 146) in Lorain County, when the automobile she was driving struck a pothole causing rim and alignment damage to the vehicle.

{¶ 2} 2) Plaintiff, Jean Dombrosky, Lisa Dombrosky's mother, paid for the repair costs to the automobile Lisa Dombrosky was driving. Plaintiff filed this complaint seeking to recover \$512.84, the cost of replacement parts and associated repair expenses, plus a claim for filing fee reimbursement. Plaintiff contended her damages were proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway.

{¶ 3} 3) Defendant denied liability based on the assertion it professed to have no knowledge of the damage-causing pothole prior to the February 15, 2005, incident. Defendant denied receiving any complaints from any source about the pothole prior to February 15, 2005.

{¶ 4} 4) Plaintiff filed a response to the investigation report on September 12, 2005, however, she did not submit any evidence to establish the length of time the pothole existed prior to the February 15, 2005, property damage event.

{¶ 5} 5) Evidence has shown defendant conducted frequent pothole patching operations in the area of milepost 146 on Interstate 90 on February 3, 2005, twelve days prior to the incident forming the basis of this claim.

{¶ 6} 6) Plaintiff argued DOT personnel should have conducted more frequent roadway inspections of Interstate 90 during the winter season when potholes are more likely to form. Plaintiff suggested defendant does not make a written record of all calls and complaints receiving regarding roadway defects. Plaintiff did not substantiate this suggested neglect on the part of DOT. Plaintiff stated she contacted the DOT garage in Oberlin, Ohio and was told by a DOT employee that not all phone complaints, including complaints of potholes, are logged and recorded. Plaintiff did not submit evidence to show how long the pothole at milepost 146 on Interstate 90 was present on the roadway before 3:45 p.m. on February 15, 2005. Plaintiff did not produce evidence to prove the damage-causing pothole was a deteriorated repair which had been previously patched.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 3) 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. 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. There is no indication defendant had constructive notice of the pothole. Furthermore, plaintiff has not provided 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.

{¶ 10} 4) 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.

IN THE COURT OF CLAIMS OF OHIO

JEAN F. DOMBROSKY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07119-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
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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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RDK/laa
9/21
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