

[Cite as *Pink v. Ohio Dept. of Transp.*, 2006-Ohio-7170.]

IN THE COURT OF CLAIMS OF OHIO

ROBIN PINK	:	
Plaintiff	:	
v.	:	CASE NO. 2005-11353-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Robin Pink, asserted she was traveling through a roadway construction area on a roadway exit ramp on November 15, 2005, at approximately 7:00 a.m., when her car struck a roadway defect causing tire and rim damage to the vehicle. Plaintiff stated she was "exiting off of I-70 E at exit #79 (London)," in an area where orange traffic control barrels were positioned to direct traffic onto the roadway berm across the painted edge line. According to plaintiff, as she approached the stop sign at the end of the exit ramp, her vehicle "struck something that made the car veer from side to side." Plaintiff pointed out the roadway on the exit ramp was uneven. The location of the pavement defect was Ramp D of State Route 42 from Interstate 70.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover \$583.41 for replacement parts costs and related repair expenses resulting from the November 15, 2005, incident. Plaintiff has asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway in a

construction zone on Interstate 70 and exit ramps. Plaintiff submitted the filing fee with the complaint and seeks reimbursement of that amount.

{¶ 3} 3) Defendant explained the area where plaintiff's damage occurred was located within a construction zone under the control of DOT contractor, Kokosing Construction Company, Inc. ("Kokosing"). Additionally, defendant denied liability in this matter based on the allegation that neither DOT nor Kokosing had any knowledge of the pothole plaintiff's vehicle struck. Defendant asserted Kokosing personnel conducted daily inspections of the roadway and promptly patched any potholes that were discovered. Defendant suggested the pothole which damaged plaintiff's car appeared overnight due to inclement weather conditions.

{¶ 4} 4) Plaintiff did not submit any evidence to establish the length of time the pothole was on the roadway prior to the November 15, 2005, property damage event.

{¶ 5} 5) Defendant asserted Kokosing, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued Kokosing is the proper party defendant in this action. Defendant implied all duties, such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair defects, were delegated when an independent contractor takes control over a particular section of roadway.

{¶ 6} 6) Furthermore, defendant again denied having any notice of the damage-causing pothole. Defendant contended plaintiff failed to introduce evidence proving any requisite notice. The claim is devoid of evidence concerning the actual

or constructive notice of the particular pothole by DOT personnel or DOT contractors on November 15, 2005.

CONCLUSIONS OF LAW

{¶ 7} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD, jud, 2004-Ohio-151.

{¶ 8} 2) 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.

{¶ 9} 3) 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 defective condition 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.

{¶ 10} 4) 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.

{¶ 11} 5) Plaintiff has not produced any evidence to indicate the length of time the defective condition 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 roadway defect. 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 condition appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the defect. 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway defect.

{¶ 12} 6) 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 condition was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the construction area, 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.

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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE
TRANSPORTATION : DETERMINATION
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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Sent to S.C. reporter 5/11/06