

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

APRIL DAVIDOW

Plaintiff

v.

Case No. 2006-04229-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION-DISTRICT #8

Defendant

FINDINGS OF FACT

{¶ 1} 1) On May 31, 2006, plaintiff, April Davidow, was traveling on US Route 22 at the intersection of Keller Road in Cincinnati, when her automobile struck a pothole causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$1,961.69, the cost of replacement parts and automotive repair necessitated by the property damage event. Plaintiff implied the damage to her car was proximately caused by 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 contention that no DOT personnel had any knowledge of the pothole on the roadway prior to plaintiff’s property damage occurrence. Defendant located the damage-causing pothole at milepost 12.18 on US Route 22 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim. Defendant suggested the pothole plaintiff’s car struck probably existed “for only a relatively short time before plaintiff’s incident.”

{¶ 4} 4) Plaintiff did not submit any evidence to establish the length of time the pothole existed prior to the May 31, 2006, property damage event.

{¶ 5} 5) Defendant denied being aware of the particular pothole before plaintiff's damage occurrence. 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} 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} 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 incident. *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} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole for a sufficient length of time to invoke liability. 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. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's

{¶ 9} acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. 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 287. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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:

April Davidow
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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

RDK/laa
9/13
Filed 9/29/06
Sent to S.C. reporter 6/21/07