

[Cite as *Bell v. Ohio Dept. of Transp.*, 2007-Ohio-1207.]

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

JESSICA K. BELL

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-05748-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On July 28, 2006, at approximately 3:30 p.m., plaintiff, Jessica K. Bell, was traveling south on State Route 44 in Rootstown, Ohio, when her truck hit a dislodged manhole cover laying in the traveled portion of the roadway. Plaintiff related the manhole cover, “was flipped up and I didn’t notice it until my truck was already going over the lid.” The impact from striking the dislodged manhole cover caused plaintiff to lose control of her vehicle as well as causing substantial property damage.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$2,218.49, the total cost of repairs for her 2000 Ford Ranger for property damage sustained as a result of striking the manhole cover. Plaintiff implied her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous condition on the roadway. The filing fee was paid and plaintiff requested reimbursement of that amount as damages.

{¶3} 3) Defendant denied having any knowledge of the condition of the manhole cover prior to plaintiff’s incident. Defendant denied receiving any calls or complaints about a loose manhole cover near milepost 8 on State Route 44 in Portage County prior to 3:30 p.m. on July 28, 2006. Defendant explained DOT personnel conducted routine road inspections and did not discover any loose manhole covers on State Route 44 prior to July 28, 2006.

{¶4} 4) Plaintiff did not provide any evidence to establish the length of time the manhole cover was loose prior to the incident forming the basis of this claim.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} In order to prove a breach of 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

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Ohio Misc. 2d 1. 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 developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861.

{17} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *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. Plaintiff has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's roadway maintenance activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to her vehicle. *Hall v. Ohio Department of Transportation* (2000), 99-12863-AD.

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ENTRY OF ADMINISTRATIVE
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 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:

Jessica K. Bell
4065 Bassett Road
Atwater, Ohio 44201

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

RDK/laa
1/10
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