

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

MATTIE P. CURTIS, et al.

Plaintiffs

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-06965-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about September 2, 2006, plaintiff, Mattie P. Curtis, was driving a car owned by plaintiff, Jerry L. Curtis, Sr., on the westbound Interstate 480 entrance exit ramp in Cleveland when the vehicle struck a pothole causing tire and rim damage.

{¶2} 2) Plaintiffs filed this complaint seeking to recover \$473.00, the cost of replacement parts and automotive repair necessitated by the property damage event. Plaintiffs implied the damage to the 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 plaintiffs’ property damage occurrence. Defendant located the damage-causing pothole at milepost 12.70 on Interstate 480 in Cuyahoga County. Defendant asserted plaintiffs failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiffs’ incident. Defendant explained DOT employees conduct roadway inspections, “at least two times a month.” Apparently no potholes were discovered during previous roadway inspections. Defendant suggested the pothole likely, “existed for only a short time before the incident,” forming the basis of this claim. Defendant denied DOT employees were negligent in regard to roadway maintenance.

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 the duty to maintain the highways, plaintiffs must prove, by a preponderance of the evidence, that defendant has 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.

{¶17} Plaintiffs have 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. Plaintiffs have 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. Plaintiffs have 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. 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 plaintiffs may have suffered from the pothole.

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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 plaintiffs. 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:

Mattie P. Curtis
Jerry L. Curtis
3446 Dawn Drive
North Olmsted, Ohio 44070

Keith Swearingen, Acting Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
1/30
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