

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

MRS. BRENDA GALBO

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-01207-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On or about December 5, 2006, at approximately 1:45 p.m., plaintiff, Brenda Galbo, was traveling north on U.S. Route 23, “approximately 165 feet south of the intersection of US Rt. 23 and Meadow Park Avenue,” in Delaware County, when her automobile struck a pothole causing tire damage to the vehicle. Plaintiff estimated the damage-causing pothole was, “20-24 inches deep and 18-20 inches across.”

{¶ 2} Plaintiff filed this complaint seeking to recover \$351.20, the cost of replacement tires which she contends she incurred as a result of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing pothole prior to plaintiff’s incident. Defendant denied receiving any prior complaints about the pothole on U.S. Route 23 which DOT located, “at approximately milepost 1.80 in Delaware County.” Defendant explained, “it is more likely than not the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.” Defendant asserted DOT employees conduct roadway inspections on a routine basis and apparently had not discovered any potholes on U.S. Route 23 during these routine inspections.

[Cite as *Galbo v. Ohio Dept. of Transp.*, 2007-Ohio-1996.]

{¶ 4} Despite filing a response, plaintiff did not submit any evidence to establish the length of time the defect was on the roadway prior to her property damage incident.

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, 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.

{¶ 7} 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 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:

Mrs. Brenda Galbo
585 Glenside Lane
Powell, Ohio 43065

James Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
3/21
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