

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

LEISA WHITE

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-01924-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On January 18, 2007, at approximately 12:53 a.m., plaintiff, Leisa White, was traveling west on Interstate 90 in the city of Avon, Ohio, “approximately ½ mile from the Rt. 83 exit,” when her automobile struck a large pothole causing wheel damage to the vehicle. Plaintiff stated she pulled her car to the side of the road within moments of striking the pothole. Furthermore, plaintiff stated that before she exited her stopped vehicle to inspect for damage, an Avon Police Officer stopped a patrol vehicle near her car and offered assistance. Plaintiff noted the Avon Police Officer told her he knew about the pothole that had damaged her vehicle and informed her the Avon Police Department had previously notified defendant, Department of Transportation (“DOT”) about the pothole one week prior to the January 18, 2007, incident. Plaintiff related she called defendant’s Lorain County Office at 2:24 a.m. on January 18, 2007, to register a complaint about the pothole on Interstate 90. Plaintiff recalled that when she made phone contact with the DOT Lorain County Office she heard the man who responded to her pothole complaint ask someone in the background, “did we ever fix that pothole on Rt 90?”

{¶2} 2) Plaintiff filed this complaint seeking to recover \$368.24, her total cost of automotive repair and replacement parts resulting from the January 18, 2007, property damage occurrence. Plaintiff also requested reimbursement of the \$25.00 filing fee. Plaintiff has asserted her property damage was proximately caused by negligence on the part of DOT in failing to maintain the roadway.

{¶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 event. Defendant located the pothole at state milepost 154.60 on Interstate 90 in Lorain County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed before her incident at 12:53 a.m. on January 18, 2007. Defendant suggested, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.”

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff’s damage occurrence. Defendant disputed plaintiff’s assertion that the Avon Police Department notified DOT of the pothole on or about January 11, 2007. Defendant maintained the Avon Police Department reported the pothole to the DOT Lorain County representative at 10:20 a.m. on January 18, 2007. Defendant

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acknowledged plaintiff reported the pothole to the DOT Lorain County Garage at 2:24 a.m. on January 18, 2007. Defendant explained the DOT night crew repaired the pothole, “right away.” Defendant noted potholes were previously patched, in the area of plaintiff’s January 18, 2007, damage event, on November 28, November 30, December 11, and December 12, 2006.

{¶5} 5) Plaintiff filed a response. Plaintiff insisted the Avon Police Department reported the pothole to DOT before her damage occurrence. Plaintiff reiterated that when she phoned to report the pothole she heard the DOT representative ask someone in the background, “Hey did we fix that pothole on 90?” Plaintiff also related she had conversations with co-workers about the roadway conditions on Interstate 90. Plaintiff recalled a few of her co-workers told her they had seen the particular pothole on Interstate 90 at least three days before January 18, 2007. Plaintiff did not provide any statements from any individual who was aware of a pothole at milepost 154.60 on Interstate 90 prior to January 18, 2007.

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 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.

{¶8} Plaintiff has not produced sufficient evidence to indicate the length of time the

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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. 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. In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD. Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set-time standard for the discovery of certain road hazards." *Bussard*, supra, at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb. 4, 1993), Franklin App. 92AP-1183, 1993 Ohio App. LEXIS 636. Plaintiff has failed to produce sufficient evidence to prove DOT had constructive notice of the roadway condition. Furthermore, 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. Plaintiff's claim is denied.

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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:

Leisa White
618 Cambridge Avenue
Elyria, Ohio 44035

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

RDK/laa
5/8
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