

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

KIMBERLY LEHMKUHL

Case No. 2007-02416-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) On February 20, 2007, at approximately 7:30 p.m., plaintiff, Kimberly Lehmkuhl, was traveling east on State Route 125, “in the 800 Block, in the curb lane,” when her automobile struck a large pothole causing tire damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$86.21, the total cost of replacement parts 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 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, “approximately at milepost 1.96 on SR 125 in Clermont County.” Defendant submitted documents showing DOT employees conducted pothole patching operations on State Route 125 from mileposts 1.00 to 7.00. The pothole repairs in this area were done on February 20, 2007. Presumably no employee associated with the DOT repair crew noticed a pothole at milepost 1.96 during these patching operations. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim.

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{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff's 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.

{¶5} 5) 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

{¶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 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. There is no indication

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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

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:

Kimberly Lehmkuhl
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James Beasley, Director
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1980 West Broad Street
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RDK/laa
5/1
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