

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

EUGENE W. JOHNSON

Case No. 2007-02394-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶ 1} 1) On February 20, 2007, at approximately 8:00 p.m., a car owned by plaintiff, Eugene W. Johnson, was traveling east on State Route 125 in Withamsville, Ohio, “between Fulton Grove and Banks Roads,” when the automobile struck “a huge unseen pothole,” causing tire and wheel damage.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$535.34, the cost of replacement parts and automotive repair necessitated by the property damage event. Plaintiff implied that the damage to his 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 plaintiff’s property damage occurrence. Defendant located the damage-causing pothole, “between milepost 1.79 and milepost 2.13 on SR 125 in Clermont County.” Defendant submitted evidence showing that pothole patching operations were conducted by DOT personnel on State Route 125 on February 20, 2007, between mileposts 1.00 and 7.00. Presumably the pothole that damaged plaintiff’s vehicle was not discovered by defendant’s patching crews.

[Cite as *Johnson v. Ohio Dept. of Transp.*, 2007-Ohio-3755.]

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

{¶ 5} 5) Despite filing a response, plaintiff did not produce evidence establishing the length of time the pothole existed prior to his property damage occurrence at 8:00 p.m. on February 20, 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} To prove a breach of the duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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. No evidence has shown defendant had actual notice of the damage-causing pothole.

{¶ 8} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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. 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

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may have suffered from the pothole.

[C



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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.

MILES C. DURFEY
Clerk

Entry cc:

Eugene W. Johnson
3823 Gatewood Drive
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James Beasley, Director
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RDK/laa
5/1
Filed 5/31/07
Sent to S.C. reporter 7/24/07