

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

MARY ANNE SEBAK

Case No. 2007-01959-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) On January 15, 2007, at approximately 8:25 a.m., plaintiff, Mary Anne Sebak, was traveling west on Interstate 76 at milemarker 12.2 in Summit County when her automobile struck a pothole causing substantial damage to the vehicle. Plaintiff submitted photographs of the roadway surface where her property-damage incident occurred. The photographs depict an area containing multiple roadway surface repairs due to potholes. Photographs also show several automobile wheel covers on the berm and side of the roadway.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$2,137.66, the cost of replacement parts and automotive repair costs related to the January 15, 2007, damage event. Plaintiff implied that the damage to her 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 on Interstate 76 at state milepost 24.20 (county milepost 12.20) in Summit County. Defendant asserted that plaintiff failed to produce any evidence showing how long the pothole existed prior to the

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incident forming the basis of this claim. 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 incident. Defendant explained that DOT employees conduct roadway inspections, “at least one to 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 submit sufficient evidence to establish the length of time that 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

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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 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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
5/9
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