

[Cite as *Deahl v. Dept. of Transp.*, 2007-Ohio-4504.]

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

DENNIS E. DEAHL

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-03528-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 5, 2007, at approximately 12:45 p.m., plaintiff, Dennis E. Deahl, was traveling, “from Edwards Road to the entrance ramp of I-71 North,” when his automobile struck a pothole causing tire damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$121.82, his cost of a replacement tire resulting from the March 5, 2007, property damage event. Plaintiff implied 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 and plaintiff seeks reimbursement of that amount along with his damage claim.

{¶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 at milepost 7.00 on Interstate 71 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim.

{¶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 one to two times a month.” Apparently, no potholes were discovered during previous roadway inspections. Defendant denied 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 the pothole existed prior to 12:45 p.m. on March 5, 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

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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 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.

{¶9} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his injury was proximately caused by defendant's negligence. Plaintiff failed to show the roadway condition was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

{¶10} June 25, 2007.

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DEPT. OF TRANSPORTATION

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
6/25
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