

[Cite as *Payne v. Ohio Dept. of Transp.*, 2007-Ohio-4869.]

# 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  
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JOHN M. PAYNE

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-02751-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On February 26, 2007, at approximately 8:00 p.m., plaintiff, John M. Payne, was traveling on Pearl Road in Medina, Ohio, “in front of Steve Dakota’s Grill,” when his automobile struck a pothole causing wheel damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$625.00, the cost of replacement parts resulting from the February 26, 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.

{¶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 21.5 on US Route 42 in Medina County. Defendant asserted that plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim. Defendant suggested, “the pothole existed in that location for only a relatively short amount of time before the time of the 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 two time a month.” Apparently no potholes were discovered during previous roadway inspections. Defendant denied that DOT employees were negligent in regard to roadway maintenance.

## CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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

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Ohio Misc. 2d 1.

{¶7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present in 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. 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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JOHN M. PAYNE

Case No. 2007-02751-AD

Plaintiff

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OHIO DEPARTMENT OF  
TRANSPORTATION

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant

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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.

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MILES C. DURFEY  
Clerk

Entry cc:

John M. Payne  
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Department of Transportation  
1980 West Broad Street  
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RDK/laa  
6/13  
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