

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

RICHARD MEIER

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2007-04109-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On February 24, 2007, at approximately 6:00 a.m., plaintiff, Richard Meier, was traveling north on State Route 306, “less than one mile north of U.S. 422,” in Geauga County, when his automobile struck a pothole in the roadway. The impact of striking the pothole caused damage to two wheels and the front right PSI sensor of plaintiff’s vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,104.16, the cost of replacement parts and automotive repair expenses resulting from the February 24, 2007, property damage event. Plaintiff implied he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the particular pothole prior to plaintiff’s property damage occurrence. Defendant denied receiving any calls or complaints, before February 24, 2007, regarding the damage-causing pothole, which DOT located at milepost 3.75 on State Route 306 in Geauga County. Defendant suggested, “it is likely the pothole existed for only a short time before the incident.”

{¶4} 4) Defendant explained the DOT Geauga County Manager conducts roadway inspections of all state roadways within Geauga County, “at least two times a month.” Apparently no potholes were discovered on State Route 306 the last time the roadway was inspected prior to February 24, 2007. Defendant contended plaintiff failed to produce evidence to establish the length of time the pothole existed prior to 6:00 a.m. on February 24, 2007.

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, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶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

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notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. 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, 507 N.E. 2d 1179.

{¶7} 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, 577 N.E. 2d 458. 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, 578 N.E. 2d 891. 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Richard Meier
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RDK/laa
7/12
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