

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

CYNTHIA HARGIS

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-03536-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 1, 2007, at approximately 4:00 p.m., plaintiff, Cynthia Hargis, was traveling west on Interstate 74 near milepost 4.0 in Hamilton County, when her automobile struck a pothole causing wheel damage to the vehicle. Plaintiff recalled she reported the pothole after the March 1, 2007, incident, but as of March 4, 2007, the pothole had not been repaired.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$725.99, the cost of replacement parts and repair expense necessitated by the property damage event. Plaintiff contended 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 at milepost 4.0 on Interstate 74 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. Defendant suggested, “it is likely the pothole existed for only a short time before the incident.”

{¶4} 4) Defendant’s records note one complaint was received on January 12, 2007, regarding potholes on Interstate 74. Defendant stated, “ODOT agreed to have the problem taken care of with night work.” Defendant’s records show the complaint about potholes was resolved by March 26, 2007. Defendant explained DOT employees conduct roadway inspections, “at least 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) Plaintiff filed a response insisting the roadway where her damage occurred, “was in very poor condition and not maintained by proper maintenance.” Plaintiff disputed defendant’s assertions concerning roadway inspections by DOT personnel. Plaintiff contended DOT’s roadway inspections are either incompetently performed or fabrication. Plaintiff stated the particular section of Interstate 74, “went for weeks with multiple pothole for a long stretch of the roadway.” Plaintiff did not produce evidence to establish the length of time the pothole her car struck was present on the roadway prior to

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March 1, 2007.

CONCLUSIONS OF LAW

{¶16} 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.

{¶17} 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.

{¶18} 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 particular damage-causing 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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OHIO DEPARTMENT OF
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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:

Cynthia Hargis
11621 Oxford Road
Harrison, Ohio 45030

James Beasley, Director
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RDK/laa
6/13
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