[Cite as *Haske v. Dept. of Transp.*, 2007-Ohio-5830.]

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

MATTHEW J. HASKE

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-04290-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 27, 2007, between 6:30 and 7:30 p.m., plaintiff, Matthew J. Haske, was riding his motorcycle south on Interstate 71, through a construction zone, when the vehicle struck a pothole causing substantial property damage. Plaintiff related the damage-causing pothole was located, "between 224 & 83," on Interstate 71 South.

{¶2} 2) Plaintiff implied that the damage to his motorcycle was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway within a construction area on Interstate 71 in Medina County. Plaintiff filed this complaint seeking to recover $500.00, his insurance coverage deductible[1] for vehicle repair costs, plus $168.00 for work loss. The filing fee was paid.

{¶3} 3) Defendant explained that the area where plaintiff's damage occurred was located within a construction zone under the control of DOT contractor, The Ruhlin Company (Ruhlin). Additionally, defendant denied liability in this matter based on the contention that neither DOT nor Ruhlin had any knowledge of the pothole plaintiff's motorcycle struck. Defendant related that DOT's records show prior complaints were made about potholes on Interstate 71, but not in the particular location described by plaintiff. Plaintiff did not submit any evidence to establish the length of time the pothole was on the roadway prior to his property damage event.

{¶4} 4) All construction was to be performed to DOT requirements and specifications. Defendant asserted that Ruhlin, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued that Ruhlin is the proper party defendant in this action. Defendant implied that all duties, such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair defects were delegated to an independent contractor when that contractor takes control over a particular section of roadway.

CONCLUSIONS OF LAW

{¶5} The duty of DOT to maintain the roadway in a safe drivable condition is not

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[1] R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances."

delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. *Cowell v. Ohio Department of Transportation*, 2003-09343-AD, jud, 2004-Ohio-151.

{¶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, 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.

{¶7} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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, 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. No evidence has shown defendant had actual notice of the damage-causing pothole.

{¶8} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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 defective condition developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. Additionally, size of a pothole is insufficient to prove notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287, 587 N.E. 2d 891. There is no evidence defendant had constructive notice of the pothole.

{¶9} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that a dangerous condition was created

by any conduct under the control of defendant, that defendant was negligent in maintaining the construction area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1988), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's case is denied.

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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.

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MILES C. DURFEY
Clerk

Entry cc:

Matthew J. Haske
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Berea, Ohio 44017

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RDK/laa
7/24
Filed 8/15/07
Sent to S.C. reporter 10/3/07