

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

PAMELA M. BAACH

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-04532-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 26, 2007, at approximately 10:00 p.m., plaintiff, Pamela M. Baach, was traveling east on State Route 10, “before the Exit 2 (Lorain Rd.),” when her automobile struck, “a row of potholes,” causing rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$166.82, the cost of replacement parts and automotive repair expenses resulting from the March 26, 2007, property damage incident. Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. Plaintiff submitted the \$25.00 filing fee and requests reimbursement of that amount in addition to her claim for damages.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any prior knowledge of the potholes plaintiff’s vehicle struck. Defendant explained the damage causing potholes were actually located between mileposts 2.00 and 2.03 on Interstate 480 in Lorain County. According to defendant, State Route 10 and Interstate 480 overlap by Lorain Road. Defendant related no calls or complaints were received regarding these potholes on Interstate 480. Defendant suggested, “it is more likely than not that the potholes existed in that location for only a relatively short amount of time before plaintiff’s incident.”

{¶4} 4) Defendant noted the DOT Lorain County Manager conducts roadway inspections on all state roadways within Lorain County, “at least one to two times a month.” Apparently no potholes were discovered between mileposts 2.00 and 2.03 on Interstate 480 during the last inspection before March 26, 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 notice of the precise condition or defect alleged to have caused the accident. *McClellan v.*

Case No. 2007-04532-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

ODOT (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. Defendant is only liable for roadway condition 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.

{¶17} Plaintiff has not produced sufficient evidence to indicate the length of time the potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the potholes. 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 potholes 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 potholes. 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.

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

PAMELA M. BAACH

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-04532-AD

Deputy Clerk Daniel R. Borchert

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:

Pamela M. Baach
4757 Ledgewood Drive Unit #3F
Medina, Ohio 44256

RDK/laa
7/25
Filed 8/21/07
Sent to S.C. reporter 10/30/07

James G. Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223