

[Cite as *Jones v. Ohio Dept. of Transp.*, 2007-Ohio-5836.]

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

ROBERT A. JONES

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-01720-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Robert A. Jones, stated he was traveling south on North Main Street (State Route 48 in Montgomery County) at approximately 6:00 p.m. on January 15, 2007, when his automobile, “ran over a bump in the road.” Plaintiff continued to drive south for a period but then turned his car around and proceeded north to the location of the described, “bump in the road.” Plaintiff related he parked his car, “at the Penn Station Sub Shop at 5215 N. Main St. where the incident occurred.” After exiting his parked vehicle, plaintiff noted he observed several potholes on the roadway in front of the Penn Station Sub Shop. Apparently, plaintiff’s automobile had struck the potholes in the roadway causing tire and rim damage to the vehicle.

{¶2} 2) Plaintiff alleged the property damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous roadway condition. Consequently, plaintiff filed this complaint seeking to recover \$552.02, his total cost incurred for replacement parts and automotive repair resulting from the January 15, 2007, incident. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of any roadway defect or potholes prior to plaintiff’s property damage occurrence. Defendant asserted plaintiff failed to produce any evidence to establish how long the damage-causing condition existed prior to the incident forming the basis of this claim.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular potholes before plaintiff’s incident. Defendant explained DOT employees conduct roadway inspections, “at least two times a month.” Apparently no potholes were discovered during previous roadway inspections. Defendant suggested the potholes likely, “existed for only a short time before the incident,” described by plaintiff. Defendant denied 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, 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

Case No. 2007-01720-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

864.

{¶6} To prove a breach of the 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 potholes.

{¶7} 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.

{¶8} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD. Size of the defects is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287, 587 N.E. 2d 891. "A finding of constructive notice is a determination the court must make on the facts of each case not simply by applying a pre-set-time standard for the discovery of certain road hazards." *Bussard*, supra, at 4. "Obviously, the requisite length of time sufficient to constitute constructive notice varies with each specific situation." *Danko v. Ohio Dept. of Transp.* (Feb. 4, 1993), Franklin App. 92AP-1183, 1993 Ohio App. LEXIS 636. There is no evidence to establish defendant had constructive notice of the damage-causing roadway condition.

{¶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

Case No. 2007-01720-AD	- 4 -	MEMORANDUM DECISION
------------------------	-------	---------------------

by defendant's negligence. Plaintiff failed to show that the damage-causing potholes were connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10989-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-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

ROBERT A. JONES

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-01720-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:

Robert A. Jones
527 Valewood Lane
Dayton, Ohio 45405

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

RDK/laa
6/29
Filed 8/21/07
Sent to S.C. reporter 10/30/07