

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

THOMAS L. HOLCOMB

Case No. 2007-04991-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPT. OF TRANSPORTATION,
DIST. 9

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Thomas L. Holcomb, stated that he was riding his motorcycle north on State Route 505 when, “a pick up truck going southbound came over the center line and broke loose the center reflector and pitched it in the center of my lane about 30 feet in front of me.” Plaintiff related that he was unable to avoid the roadway reflector and his motorcycle tire struck the displaced object, which propelled the reflector into the undercarriage of the vehicle, puncturing the vehicle’s crankcase. Plaintiff explained that leaking oil from the punctured crankcase splashed over the motorcycle’s rear tire causing him to lose control of the vehicle. The displaced reflector caused substantial damage to plaintiff’s motorcycle. Plaintiff recalled that the described incident occurred at approximately 8:30 a.m. on April 2, 2007.

{¶2} 2) Plaintiff implied that the damage to his vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway free of hazards. Plaintiff filed this complaint seeking to recover damages in the amount of \$2,499.95. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the loose reflector on the roadway prior to plaintiff’s

April 2, 2007, property damage occurrence. Defendant located the damage-causing reflector at about milepost 4.10 on State Route 505 in Highland County. Defendant asserted that plaintiff failed to produce any evidence showing how long the uprooted reflector existed prior to 8:30 a.m. on April 2, 2007.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular reflector before plaintiff's incident. Defendant explained that DOT employees conduct routine road inspections on State Route 505 and did not notice any loose road reflectors. Defendant suggested that the loose reflector likely, "existed in that location for only a relatively short amount of time before plaintiff's incident," forming the basis of this claim. Defendant denied that 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, 3 O.O. 3d 413, 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. 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶7} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular defect was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the

loosened reflector for a sufficient length of time to invoke liability. 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 that the defect 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 uprooted reflector. 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.



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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.

MILES C. DURFEY
Clerk

Entry cc:

Thomas L. Holcomb
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Batavia, Ohio 45103

James G. Beasley, Director
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1980 West Broad Street

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RDK/laa

8/30

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