

[Cite as *Sovik v. Ohio Dept. of Transp., Dist. 3, 2007-Ohio-658.*]

# 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](http://www.cco.state.oh.us)

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WILLIAM E. SOVIK, JR.

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION, DISTRICT 3

Defendant

Case No. 2006-05861-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On August 6, 2006, at approximately 3:15 p.m., plaintiff, William E. Sovik, Jr., was traveling north on Interstate 71, “between mile marker 202-204,” through a construction zone, when his automobile struck a pothole causing tire, rim, and suspension damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$500.00, his insurance coverage deductible for automotive repair. Plaintiff’s damage claim for repair costs is limited to his insurance deductible.<sup>1</sup> Plaintiff has asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway near a construction zone on Interstate 71 in Medina County. The filing fee was paid.

{¶3} 3) Defendant explained the area where plaintiff’s damage occurred was located within a construction zone under the control of DOT contractor, Kokosing Construction Company, Inc. (“Kokosing”). Additionally, defendant denied liability in this matter based on the allegation that neither DOT nor Kokosing had any knowledge of the pothole plaintiff’s vehicle struck. Defendant submitted evidence showing Kokosing repairs roadway defects as soon as notice of the defect is received.

{¶4} 4) Plaintiff did not submit any evidence to establish the length of time the pothole was on the roadway prior to the August 6, 2006, property damage event.

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

{¶6} 6) Furthermore, defendant again denied having any notice of the damage-causing pothole. Defendant contended plaintiff failed to introduce evidence

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<sup>1</sup> 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.”

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proving any requisite notice. The claim is devoid of evidence concerning actual or constructive notice of the particular pothole by DOT personnel or DOT contractors on August 6, 2006.

#### CONCLUSIONS OF LAW

{¶7} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not 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. See *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD, jud, 2004-Ohio-151.

{¶8} 2) Defendant has the duty to maintain its highway 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.

{¶9} 3) 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.

{¶10} 4) Plaintiff has not produced any evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the 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

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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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶11} 5) 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 the damage-causing pothole was 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), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

[C



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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

William E. Sovik, Jr.  
654 Saddlebrook Drive  
Boardman, Ohio 44512

Gordon Proctor, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
12/20  
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