

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

BRADLEY E. ROST

Plaintiff

v.

DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-05598-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Bradley E. Rost, stated that he was traveling, “on the eastbound 275 entrance from the Springfield PK (747) on ramp,” when his automobile struck, “a couple of potholes,” causing tire and wheel damage to the vehicle. Plaintiff recalled that the property damage event occurred on June 6, 2007, at approximately 7:00 p.m.

{¶2} 2) Plaintiff implied that the property damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining Interstate 275 in Hamilton County. Plaintiff filed this complaint seeking to recover \$500.00, his insurance coverage deductible for automotive repair related to the June 6, 2007, incident. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the potholes plaintiff’s car struck, which defendant located at milepost 42.00 on Interstate 275 in Hamilton County. Defendant denied receiving any calls or complaints about the particular potholes prior to the incident forming the basis of this claim. Defendant suggested that, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.” Defendant noted that DOT’s, “Hamilton County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least

one to two times a month.” Apparently no potholes were discovered at milepost 42 on Interstate 275 during the last roadway inspection before June 6, 2007.

{¶4} 4) Defendant denied that DOT employees were negligent in regard to roadway maintenance. Defendant explained DOT records show, “three (3) pothole patching operations were conducted in the general vicinity of the plaintiff’s incident with the last repair being on May 15, 2007.” On that date, potholes were patched from milepost 39.60 to milepost 46.80. Defendant asserted that if DOT personnel had known about the potholes plaintiff’s vehicle struck the defects would have been promptly scheduled for repair.

{¶5} 5) Plaintiff filed a response insisting that the pothole his car struck existed sometime prior to June 6, 2007. Plaintiff submitted multiple photographs depicting a damage-causing pothole. These photographs were taken on September 26, 2007, sixteen weeks after the June 6, 2007, property damage event. Plaintiff claimed the pothole depicted in the photograph is representative of the condition of the pothole on June 6, 2007. Plaintiff reasoned: “[t]hose pictures show that the pothole clearly did not spring up suddenly in two weeks time.” Plaintiff noted that the pothole as depicted, “is and was crumbling and consistent with the cracked and deteriorating condition of the road as a whole in that area.” Plaintiff offered the photographs submitted constitute proof that the damage-causing pothole existed for some time prior to June 6, 2007. After reviewing the photographs, the trier of fact finds the pothole depicted does not appear to present a substantial roadway defect that may have occurred rapidly. The pothole shown also appears to have been created when a prior patch deteriorated.

{¶6} 6) Plaintiff also asserted that his submitted photographs show the entire roadway ramp of Interstate 275 to be in poor condition. Plaintiff contended that defendant was negligent in inspecting and maintaining the ramp. Furthermore, plaintiff claimed that the pothole depicted in the September 26, 2007, photographs had not been repaired since his June 6, 2007, damage occurrence. Plaintiff observed, “the pictures clearly show the road was poorly (maintained) over a long term (and) certainly not

promptly repaired.” Plaintiff contended that if the ramp had been adequately inspected the pothole shown in the September 26, 2007, photographs would have been detected.

CONCLUSION OF LAW

{¶17} 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.

{¶18} 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 conditions 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.

{¶19} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole or 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 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 or 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 pothole or 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 or conditions. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O’Neil v. Department of*

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Transportation (1988), 61 Ohio Misc. 2d 287, 587 N.E. 2d 891. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole or potholes.

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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:

Bradley E. Rost
3811 Forest Avenue
Cincinnati, Ohio 45212

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

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