

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 RUBIN

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-06811-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On July 17, 2007, at approximately 11:00 p.m., a car owned by plaintiff, Bradley Rubin, was traveling on US Route 50 in the Village of Terrace Park when the vehicle struck a pothole causing substantial damage.

{¶2} 2) Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous condition on the roadway. Plaintiff filed this complaint seeking to recover \$336.74, the cost of replacement parts and repair expenses incurred from the July 17, 2007, property damage occurrence. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole on the roadway prior to plaintiff’s property damage incident. Defendant located the damage-causing pothole at milepost 34.79 on US Route 50 in Hamilton County. Defendant denied receiving any calls or complaints about a pothole in the location prior to July 17, 2007. Defendant asserted plaintiff failed to offer any evidence to show how long the pothole existed prior to the incident forming the basis of this claim. Defendant explained the DOT Hamilton County Manager “inspects all state roadways within the county as least two times a month.” Apparently, the Hamilton County Manager did not discover any potholes at milepost 34.79 on US Route 50 the last time the roadway was inspected prior to July 17, 2007. No inspection

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reports were submitted. Defendant suggested the pothole that damaged plaintiff's vehicle existed for only a short period of time before 11:00 p.m. on July 17, 2007.

CONCLUSIONS OF LAW

{¶4} 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.

{¶5} 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.

{¶6} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was 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 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. 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. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287, 578 N.E. 2d 891.

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

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

James G. Beasley, Director
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12/20

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