

# 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

RONALD RANALLI

Plaintiff

v.

OHIO DEPT OF TRANSPORTATION

Defendant

Case No. 2007-07515-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Ronald Ranalli, stated he was driving his 2001 Mitsubishi Gallant west on Interstate 70 on July 29, 2007, at approximately 11:30 a.m., when he approached, “large chunks of cement that had been dislodged from the road surface and were sitting in the center lane.” Additionally, plaintiff related, “[i]n an attempt to avoid smashing into the chunks of cement, which were approximately one foot in diameter, I swerved slightly and ran into a very large and deep pothole caused by one of the chunks.” Plaintiff sustained tire and wheel damage to his vehicle as a result of striking the pothole.

{¶2} 2) Plaintiff noted that the Columbus Police Department responded to the scene after he telephoned for roadside assistance. Plaintiff asserted that he was informed by the responding police officers that the roadway lane of Interstate 70 was being closed for repairs and that several other vehicles had been damaged by either the concrete debris or potholes in the roadway.

{¶3} 3) Plaintiff contended that his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. Consequently, plaintiff filed this complaint seeking to recover \$500.00, his insurance coverage deductible for automotive repair. The filing fee was

paid.

{¶14} 4) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant denied receiving any prior calls or complaints about the particular pothole which DOT located at county milepost 13.09 on Interstate 70 East in Franklin County. Defendant acknowledged receiving notice of the pothole minutes after plaintiff's property damage occurrence at approximately 12:05 p.m. on July 29, 2007. 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.

{¶15} 5) Defendant contended that plaintiff failed to produce sufficient evidence to show that the roadway was negligently maintained. Defendant noted that DOT Franklin County Manager conducts roadway inspections of all state roadways within the county, "at least one to two times a month." Apparently, no potholes were discovered at milepost 13.09 on Interstate 70 during the last inspection prior to July 29, 2007. Defendant repaired potholes in the general area on April 2, 2007, April 20, 2007, and May 23, 2007,

#### CONCLUSIONS OF LAW

{¶16} 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.

{¶17} 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.

{¶8} 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 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 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. 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.

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MILES C. DURFEY  
Clerk

Entry cc:

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RDK/laa  
12/20

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