

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

RENO ORADINI

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-08406-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Reno Oradini, asserted that he sustained property damage to his Chrysler 300 M while traveling on the Interstate 71 North/Interstate 90 East interbelt bridge at approximately 8:30 a.m. on May 24, 2007. Specifically, plaintiff related that the rim on his automobile was bent and “rendered it unusable” when his car struck “chuck holes and spaces between bridge joints” on the interstate roadway bridge.

{¶2} 2) Plaintiff contended that his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing “to repair chuck holes and spaces between bridge joints” on the Interstate 71 bridge. Plaintiff filed this complaint seeking to recover damages totaling \$310.64, the cost of a replacement automobile rim and associated mileage expenses. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that amount along with his damage claim.

{¶3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of any roadway defect in the described area prior to plaintiff’s May 24, 2007 incident. Defendant determined that the location of plaintiff’s damage occurrence “was at approximately state milepost 247.54 or county milepost 18.87 on I-71 in Cuyahoga County.” Defendant denied receiving any calls or complaints about any roadway defects at that location prior to May 24, 2007. Defendant

asserted that plaintiff failed to produce any evidence to establish the length of time the damage-causing roadway defect existed prior to May 24, 2007. Defendant suggested that, "it is likely the potholes by the bridge joints existed for only a short time before the incident."

{¶4} 4) Defendant explained that the DOT "Cuyahoga County Manager inspects all state roadways within the county at least two times a month." Apparently no potholes near the bridge joints were discovered during the last inspection of Interstate 71 at milepost 247.54 before May 24, 2007. Defendant contended that plaintiff failed to prove DOT negligently maintained the roadway.

{¶5} 5) Despite filing a response, plaintiff did not offer evidence to show the length of time the damage-causing defective condition existed prior to May 24, 2007. Plaintiff stated again in his response that his automobile struck "spaces between bridge joints" which caused the damage claimed. Additionally, plaintiff stated that DOT must have had notice of the defects on the bridge "because major repairs were planned and completed, as evidenced by the documents I submitted with my complaint." Plaintiff had submitted copies of documents published by DOT addressing planned roadway repair work in Cuyahoga, Lake, and Geauga Counties. From these documents dated August 2, August 24, and September 18, 2007, plaintiff referenced planned work for pavement repairs and bridge repairs on Interstate 71 and Interstate 90. Although plaintiff contended that these documents show defendant had prior notice of the particular claimed defect his car struck, the trier of fact finds these DOT repair notification documents do not constitute any proof of defendant's notice of a roadway defect at milepost 247.54 on Interstate 71.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} In order to recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the condition and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶8} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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. No evidence has shown that defendant had actual notice of the damage-causing defective condition.

{¶9} 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 defective condition developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence of constructive notice of the defective condition claimed.

{¶10} 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the defect.

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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:

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RDK/laa

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