

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

MILLIE TANNER

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-08112-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On June 28, 2007, at approximately 7:00 p.m., plaintiff, Millie Tanner, was traveling east on US Route 50 in Highland County, when her truck tire was punctured by an uprooted road reflector laying on the traveled portion of the roadway.

{¶2} 2) Plaintiff implied that the damage to her tire was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway. Plaintiff filed this complaint seeking to recover \$237.49, the cost of a replacement tire. Plaintiff paid the filing fee.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the loose reflector on the roadway prior to the plaintiff's June 28, 2007, property damage occurrence. Defendant located the damage-causing reflector between mileposts 26.16 and 26.23 on US Route 50 in Highland County. Defendant asserted that plaintiff failed to produce any evidence showing how long the uprooted reflector existed prior to 7:00 p.m. on June 28, 2007.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular reflector before plaintiff's incident. Defendant explained that DOT employees conduct routine road inspections on US Route 50 and did not notice any loose road reflectors. Defendant suggested that the loose reflector likely, "existed in that location

for only a relatively short amount of time before plaintiff's incident," forming the basis of this claim. Defendant denied that DOT employees were negligent in regard to roadway maintenance.

CONCLUSIONS OF LAW

{¶15} 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.

{¶16} 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 incident. *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.

{¶17} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular defect 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 loosened reflector 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 defect 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 uprooted reflector. Plaintiff has not produced any evidence to infer that 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.

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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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Bainbridge, Ohio 45612

James G. Beasley, Director
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RDK/laa

1/15
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