

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

JOHN W. REED

Case No. 2008-01642-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, John W. Reed, stated that he was traveling “on Interstate 70 at the 152 mile marker bridge going eastbound in Muskingum County toward Zanesville, Ohio,” when his automobile struck a pothole causing substantial damage to the vehicle. Plaintiff recalled that the property damage incident occurred at approximately 6:00 a.m. on December 30, 2007.

{¶2} 2) Plaintiff implied that the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to adequately maintain the roadway in regard to pothole repair. Plaintiff filed this complaint seeking to recover \$500.00, his insurance coverage deductible for automotive repair expenses resulting from the December 30, 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 pothole prior to plaintiff’s property damage event. Defendant denied receiving any previous reports of a pothole which DOT located at state milepost 152.4 on Interstate 70 in Muskingum County. 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.”

{¶4} 4) Defendant asserted that plaintiff failed to produce evidence to show

Case No. 2008-01642-AD	- 2 -	MEMORANDUM DECISION
------------------------	-------	---------------------

that DOT negligently maintained the roadway. Defendant explained that the DOT Muskingum 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 152.4 on Interstate 70 the last time this roadway was inspected prior to December 30, 2007. Defendant’s records show that pothole patching operations were conducted in the vicinity of milepost 152.4 on September 19, 2007, December 18, 2007, December 20, 2007, and December 27, 2007. Defendant related that if the particular damage-causing pothole had been detected by DOT employees, the defect “would have been promptly scheduled for repair.”

{¶5} 5) Plaintiff filed a response explaining that when he had his car towed to a repair shop in Zanesville after the December 30, 2007 incident, he was told by repair shop personnel that he “was in fact the second person within 24 hours to have reported damage to their vehicle from that same bridge.” Plaintiff insisted that the pothole his car struck “did not just occur overnight.” Plaintiff disputes defendant’s assertions regarding roadway inspections and prior repairs.

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 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

Case No. 2008-01642-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

64, 507 N.E. 2d 1179.

{¶18} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that 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 that 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 that defendant had constructive notice of the pothole. 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. 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, 587 N.E. 2d 891. Therefore, defendant is not liable for any damage that plaintiff may have suffered from the pothole.



Case No. 2008-01642-AD

- 4 -

MEMORANDUM DECISION

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

JOHN W. REED

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-01642-AD

Clerk Miles C. Durfey

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:

John W. Reed
9535 Salem Church Road
Canal Winchester, Ohio 43110

RDK/laa

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

3/27

Filed 4/30/08

Sent to S.C. reporter 6/11/08