

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

RICHARD ARTHUR WELLING

Case No. 2007-08503-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶ 1} 1) On October 19, 2007, at approximately 1:00 a.m., plaintiff, Richard Arthur Welling, was traveling west on “US 50 (River Road) between North Bend and Cleves” when his automobile ran over an open manhole in the roadway causing tire and rim damage to the vehicle. Plaintiff related that shortly after the damage incident he was informed by local law enforcement personnel that the problem with the manhole cover was in the process of being corrected.

{¶ 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 maintain the roadway free of hazardous conditions. Plaintiff filed this complaint seeking to recover \$277.78, the cost of replacement parts needed after the October 19, 2007 property damage event. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of a displaced manhole cover on the roadway prior to plaintiff’s damage occurrence. Defendant denied receiving any calls or complaints regarding a displaced manhole cover which DOT located between mileposts 5.10 and 3.89 on U.S. Route 50 in Hamilton County. Defendant suggested that the road problem created by the dislodged manhole cover “existed for only a short time

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before the incident.”

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 recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove 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. 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 any evidence to indicate the length of time the open manhole condition 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 condition of the manhole cover. 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 defective condition 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 open manhole. Plaintiff has not produced any evidence to infer that defendant, in a general sense, maintains its highways negligent 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 damages plaintiff may have suffered from the open manhole.

{¶ 7} Plaintiff has not shown, by a preponderance of the evidence, that

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defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff has failed to show that the damage-causing condition was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-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:

Richard Arthur Welling
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Harrison, Ohio 45030

RDK/laa

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