[Cite as *Holden v. Dept. of Transp.*, 2008-Ohio-4199.]

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

PAUL E. HOLDEN

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-02053-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 18, 2008, at approximately 9:00 a.m., plaintiff, Paul E. Holden, was traveling west on State Route 286 about two miles east of Marathon, Ohio, when his truck tire was punctured by an uprooted road reflector laying on the traveled portion of the roadway.

{¶ 2} 2) Plaintiff implied the damage to his truck tire was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to adequately maintain the road free of hazards. Plaintiff filed this complaint seeking to recover expenses he incurred for a replacement tire. Plaintiff acknowledged he received payment from a collateral source as partial reimbursement for the cost of a replacement tire. Therefore, plaintiff's damage claim is limited to his out-of-pocket expense incurred.[1] Plaintiff submitted the $25.00 filing fee and requests reimbursement of that amount along with his damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the dislodged road reflector prior to plaintiff's January 18, 2008 property damage occurrence. Defendant denied receiving any calls or complaints regarding the particular road reflector which DOT located at milepost 1.70 on State Route 286 in Brown County. Defendant asserted plaintiff did not produce any

[1] R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances prescribed in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section

evidence to establish the length of time the uprooted road reflector condition existed prior to January 18, 2008. Defendant suggested the dislodged reflector "existed in that location for only a relatively short amount of time before plaintiff's incident."

{¶ 4} 4) Defendant contended plaintiff failed to prove his property damage was caused by any negligent roadway maintenance on the part of DOT. Defendant related the DOT Brown County Manager inspected the particular section of State Route 286 on January 16, 2008 and did not discover any uprooted road reflectors.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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 64, 507 N.E. 2d 1179.

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular uprooted road reflector 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. Additionally, the trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to

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apply under those circumstances."

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 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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Paul E. Holden
19033 Evans Road
Fayetteville, Ohio 45118

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

RDK/laa
5/14
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