

[Cite as *Welch v. Ohio Dept. of Transp.*, 2008-Ohio-4628.]

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

ODELLA T. WELCH

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-02487-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} “1) On January 4, 2008, at approximately 5:45 p.m., plaintiff, Odella T. Welch, was traveling south on State Route 3 at Dempsey Road in Franklin County, when her automobile, a 1994 325I BMW, struck a pothole causing tire and rim damage to the vehicle.

{¶ 2} “2) Plaintiff asserted the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$1,026.85, the cost of replacement parts and related repair expense. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that cost along with her damage claim.

{¶ 3} “3) Defendant requested this court “dismiss plaintiff’s cause of action for failure to state a claim upon which relief can be granted.” Defendant contended plaintiff did not produce any evidence to prove any conduct on the part of DOT caused her property damage. Defendant acknowledged receiving a complaint about a pothole on State Route 3 in Franklin County on January 4, 2008. Defendant stated the pothole complaint was received at 8:15 a.m., about two and a half hours after plaintiff’s property damage event. Defendant explained the pothole on State Route 3 was repaired by 10:04 p.m. on January 4, 2008. Defendant asserted plaintiff did not offer any evidence to establish the length of time the pothole existed prior to 5:45 p.m. on January 4, 2008.

{¶ 4} “4) Despite filing a response, plaintiff did not produce sufficient evidence to indicate the length of time the pothole existed prior to her property damage event. Plaintiff stated, “I travel this route several times a week and routinely avoid potholes at this same location and in the general area north of Dempsey.” Plaintiff further stated, “[t]he pothole in question was huge, approximately 2-1/2 X 1-1/2 feet in diameter and would have been visible and easily avoided had it been daylight.”

CONCLUSION 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 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 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 plaintiff may have suffered from the pothole.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

5/22
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