

# 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

KEN YOUNG

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-03181-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶ 1} 1) On November 18, 2007, at approximately 8:00 p.m., plaintiff, Ken Young, was driving his 1995 Honda del Sol east on US Route 50 in Hamilton County at 8288 Wooster Pike when the vehicle struck a pothole on the white painted edge line area of the roadway causing rim damage. Plaintiff submitted photographs depicting the damage-causing pothole that appears to be several inches deep. Plaintiff pointed out there was no lighting along the particular section of US Route 50 making it difficult for him to see any defects along the roadway edge line.

{¶ 2} 2) Plaintiff asserted 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. Consequently, plaintiff filed this complaint seeking to recover \$181.07, the cost of replacement parts and related repair expenses. The filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant denied receiving any previous calls or complaints regarding the particular damage-causing pothole which DOT located at approximately milepost 33.20 on US Route 50 in Hamilton County. Defendant asserted that plaintiff failed to provide evidence to establish the length of time the pothole existed prior to 8:00 p.m. on

November 18, 2007. 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 contended that plaintiff failed to produce any evidence to show his damage was proximately caused by negligent roadway maintenance on the part of DOT. Defendant related that the DOT “Hamilton County Manager conducts roadway inspections of all state roadways within the county on a routine basis, at least one to two times a month.” Apparently, no potholes were discovered at or near milepost 33.20 on US Route 50 the last time that particular section of roadway was inspected before November 18, 2007. Defendant asserted that if any potholes had been discovered by DOT personnel, the roadway defects “would have been promptly scheduled for repair.”

{¶ 5} 5) Defendant noted that plaintiff’s photographs depict a pothole “on the white line and past the white line which is not the traveled portion of the road.” The trier of fact finds the pothole depicted in the photograph consists of a total pavement deterioration on the roadway edge line. Defendant’s Ohio Manual of Uniform Traffic Control Devices (Manual) at page 3-21 (Markings), Section 3B.06 provides the following language in reference to Edge Line Pavement Markings: “If used, edge line pavement markings shall delineate the right or left edges of a roadway.” Furthermore, on page 3-3 Section 3A.05 B2 of defendant’s standard states: “White lines delineate: 2. The right edge of the roadway.” From a reading of defendant’s Manual in regard to the painted edge line area of a roadway, the trier of fact finds the apparent intent of the Manual language was to include the edge line area as a part of the traveled portion of the roadway. The deteriorated roadway area plaintiff’s vehicle struck was part of the traveled portion of US Route 50.

#### 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 64, 507 N.E. 2d 1179.

{¶ 8} 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.

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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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MILES C. DURFEY  
Clerk

Entry cc:

Ken Young  
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Cincinnati, Ohio 45227

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RDK/laa  
7/7

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