

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

QUENTIN P. BISHOP

Case No. 2008-03980-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO DEPT. OF TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶ 1} 1) On February 25, 2008, at approximately 6:45 a.m., plaintiff, Quentin P. Bishop, was traveling north on Interstate 75 near the Interstate 275 exit/west split in Hamilton County, when his automobile struck a pothole causing tire and rim damage to the vehicle. Plaintiff submitted photographs (taken March 2, 2008) depicting the roadway area where the incident occurred. The photographs show pavement areas where multiple recent pothole patches had been completed as well as a portion of roadway where an older pothole patch had begun to deteriorate.

{¶ 2} 2) Plaintiff asserted 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 defects. Plaintiff filed this complaint seeking to recover \$589.00, the cost of replacement parts for a new tire and rim. In his complaint, plaintiff noted he reported the pothole problem to defendant's Cincinnati office. Plaintiff stated, "I immediately contacted your (DOT) Cincinnati division and spoke to a guy named Justin who is a supervisor at ODOT (in Cincinnati) and he told me he hit those same potholes the day after." Plaintiff submitted the filing fee.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff's February 25, 2008 property damage occurrence. Defendant denied receiving

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prior calls or complaints about the pothole plaintiff's car struck, which DOT located at approximately milemarker 16.42 on Interstate 75 in Hamilton County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to February 25, 2008. Defendant suggested "it is likely the pothole existed for only a short time before the incident." Defendant stated the DOT "Hamilton County Manager inspects all state roadways within the county at least two times a month." Apparently, no potholes were discovered at milemarker 16.42 on Interstate 75 the last time that section of roadway was inspected prior to February 25, 2008. Defendant's maintenance records show pothole patching was performed in the vicinity of plaintiff's incident on October 10, 2007, November 30, 2007, January 3, 2008, January 23, 2008, February 11, 2008, and February 14, 2008.

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 a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the pothole 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.

{¶ 6} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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

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reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. No evidence has shown that defendant had actual notice of the damage-causing pothole.

{¶ 7} 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 defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence of constructive notice of the pothole.

{¶ 8} 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. 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

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