

[Cite as *Alex v. Ohio Dept. of Transp.*, 2008-Ohio-5606.]

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

JOHN R. ALEX

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-02720-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

[Cite as *Alex v. Ohio Dept. of Transp.*, 2008-Ohio-5606.]

FINDINGS OF FACT

{¶ 1} 1) On June 30, 2006, at approximately 2:30 p.m., plaintiff, John R. Alex, was traveling on an Interstate 275 entrance ramp in Hamilton County when his motorcycle struck a large pothole causing substantial damage to the vehicle. Plaintiff related the damage-causing pothole was located on the Exit 41 ramp for Interstate 275 around a curve near an overpass. Plaintiff submitted photographs depicting the pothole after patching repairs had been completed. The photographs show repair of a substantial roadway defect abutting and adjacent to an expansion joint.

{¶ 2} 2) Plaintiff asserted his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway free of defects. Plaintiff therefore, filed this complaint seeking to recover \$502.42, the total cost of vehicle repair and replacement parts. 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 the recurrence of the pothole prior to plaintiff’s property damage event. Defendant’s records show the damage-causing pothole, which DOT located at milepost 41.0 on Interstate 275 in Hamilton County, was reported on March 27, 2006, and was repaired well before June 30, 2006, the date of plaintiff’s incident. Defendant’s maintenance history recorded potholes were patched in the vicinity of milepost 41.0 on Interstate 275 on March 20, 2006, April 9, 2006, April 19, 2006, and April 27, 2006. Defendant contended plaintiff failed to produce evidence to show DOT negligently maintained the roadway. Defendant explained the DOT Hamilton County Manager “conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month.” Apparently no potholes were discovered at milepost 41.0 on Interstate 275 the last time this roadway was inspected prior to June 30, 2006. Defendant stated “that if any ODOT personnel had detected any defects they would have been promptly scheduled for repair.”

{¶ 4} 4) Plaintiff filed a response asserting defendant should have discovered the pothole at milepost 41.0 on Interstate 275 through regular inspections. Plaintiff reasoned “[t]he fact that the pothole was not fixed, nor detected, shows negligence on the part of Defendant.” According to plaintiff, defendant’s failure to detect the pothole and then conduct prompt repairs constitutes negligence.

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 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.

{¶ 7} 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 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.

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

{¶ 9} 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.

{¶ 10} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his property damage was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant. *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

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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:

John R. Alex
3033 Ambler Drive
Cincinnati, Ohio 45241

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

RDK/laa
7/1
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