

[Cite as *Schuerman v. Ohio Dept. of Transp.*, 2008-Ohio-5611.]

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

MARY JO SCHUERMAN

Case No. 2008-03068-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPT. OF TRANSPORTATION

Defendant

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FINDINGS OF FACT

{¶ 1} 1) On February 26, 2008, at approximately 1:30 p.m., plaintiff, Mary Jo Schuerman, was traveling south on Interstate 71 between Exit #7 and Exit #6 in Hamilton County when her automobile struck a pothole causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff asserted that her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway. Plaintiff filed this complaint seeking to recover \$212.96, the cost of a replacement tire. 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 damage-causing pothole prior to plaintiff's property damage event. Defendant denied receiving any priors calls or complaints about the particular pothole which DOT located between mileposts 7.92 and 6.96 on Interstate 71 in Hamilton County. Defendant asserted that plaintiff did not produce any evidence to establish the length of time the pothole existed prior to February 26, 2008.

{¶ 4} 4) Furthermore, defendant contended that plaintiff failed to produce evidence to show that DOT negligently maintained the roadway. Defendant explained that 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 between mileposts 7.92 and 6.96 on Interstate 71 the last time this section of roadway was inspected before February 26, 2008. Defendant advised if any DOT personnel would have detected potholes the particular defects would have been "promptly scheduled for repair." DOT records show no potholes were repaired in the general vicinity of plaintiff's incident during the six-month period preceding February 26, 2008.

{¶ 5} 5) Plaintiff filed a response expressing her belief defendant should bear liability for her property damage pointing out that the defect her car struck was "a very deep, large hole that should have been repaired." Plaintiff recalled she traveled on Interstate 71 on a daily basis and multiple potholes had formed on that roadway during February 2008 due to inclement weather accompanied by DOT snow removal operations. Plaintiff did not provide evidence to show the length of time the particular pothole her vehicle struck was present on the roadway prior to 1:30 p.m. on February

26, 2008.

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 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.

{¶ 8} 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.

{¶ 9} 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. 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.

{¶ 10} 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.

{¶ 11} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her 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.

MILES C. DURFEY
Clerk

Entry cc:

Mary Jo Schuerman
329 Shadow Ridge Road
Cold Spring, Kentucky 41076

James G. Beasley, Director
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1980 West Broad Street
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RDK/laa
7/7
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