

[Cite as *Landers v. Ohio Dept. of Transp.*, 2008-Ohio-5623.]

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

CATHERINE M. LANDERS

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-03785-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

[Cite as *Landers v. Ohio Dept. of Transp.*, 2008-Ohio-5623.]

FINDINGS OF FACT

{¶ 1} 1) On March 14, 2008, at approximately 9:00 p.m., plaintiff, Catherine M. Landers, was traveling north on Montgomery Road (US Route 22) near 9090 Montgomery Road in Kenwood, Ohio, when her automobile struck a very large pothole causing tire and rim damage to the vehicle. Plaintiff recalled she was able to view the pothole during daylight hours and estimated the size of the roadway defect at “approximately 2 feet by 1 ½ feet and very deep 10-12 inches deep.” Plaintiff submitted photographs depicting the pothole after patching repairs were completed.

{¶ 2} 2) Plaintiff implied the damage to her car, a 1999 Volvo, 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 damages in the amount of \$524.11, representing the complete expense she incurred for replacement parts and automotive repair costs. Plaintiff paid the \$25.00 filing fee and seeks reimbursement of that cost along with her damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular pothole on the roadway prior to plaintiff’s property damage event. Defendant denied receiving any prior calls or complaints about the pothole which DOT located at milepost 13.10 on US Route 22 in Hamilton County. Defendant asserted plaintiff did not offer any evidence to establish the length of time the pothole was on the roadway before 9:00 p.m. on March 14, 2008. Defendant suggested, “it is likely the pothole existed for only a short time before the incident.”

{¶ 4} 4) Defendant contended plaintiff failed to prove DOT negligently maintained the roadway. Defendant explained the DOT, “Hamilton County Manager inspects all state roadways within the county at least two times a month.” Apparently no potholes were discovered near milepost 13.10 on US Route 22 the last time that specific section of roadway was inspected prior to March 14, 2008.

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 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.

{¶ 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 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Catherine M. Landers
6495 Lantana Drive
Liberty Township, Ohio 45044

James G. Beasley, Director
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1980 West Broad Street
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RDK/laa
7/8
Filed 7/31/08
Sent to S.C. reporter 10/28/08