

[Cite as *Anderson v. Ohio Dept. of Transp.*, 2008-Ohio-5626.]

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

BERNADINE ANDERSON

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-04102-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

[Cite as *Anderson v. Ohio Dept. of Transp.*, 2008-Ohio-5626.]

FINDINGS OF FACT

{¶ 1} 1) On March 21, 2008, at approximately 12:15 a.m., plaintiff, Bernadine Anderson, was traveling east on Interstate 70 on the #112 exit ramp in Fairfield County, when her automobile struck a large pothole in the roadway causing substantial damage.

{¶ 2} 2) Plaintiff asserted that the property damage to her car was proximately caused by negligence on the part of defendant in maintaining the roadway. Plaintiff filed this complaint seeking to recover damages in the amount of \$306.28, for automotive repair expenses. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of a pothole on the Interstate 70 exit ramp prior to plaintiff's March 21, 2008 incident. Defendant related that the DOT Licking County Manager, James Valentine, inspected the ramp at sometime prior to April 17, 2008 and did not discover any potholes on the ramp. A written communication (copy submitted) from Valentine reported no potholes were discovered on "the southbound ramp to SR 256 from I-70 east bound." Valentine did discover "some pot holes on the main-line through lanes of I-70 east bound, west and east of this exit ramp." Defendant denied receiving any calls or complaints about the particular pothole prior to plaintiff's damage occurrence. 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." Defendant contended that plaintiff failed to produce evidence to establish the length of time the pothole was present on the roadway prior to 12:15 a.m. on March 21, 2008.

{¶ 4} 4) Furthermore, defendant argued that plaintiff has not offered evidence to prove her damage was caused by any negligence on the part of DOT. Defendant explained that the DOT "Licking County Manager conducts roadway inspections on I-70 in Fairfield County on a routine basis, at least twice a week for potholes." Apparently, no potholes were discovered the last time that specific section of Interstate 70 was inspected prior to March 21, 2008. DOT records show pothole patching operations were conducted in the vicinity of plaintiff's property damage occurrence on December 18, 2007, January 16, 2008, February 6, 2008, February 7, 2008, February 15, 2008,

and March 5, 2008.

CONCLUSION 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 pp. 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 has 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:

Bernadine Anderson
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Pickerington, Ohio 43147

James G. Beasley, Director
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Columbus, Ohio 43223

RDK/laa
7/9
Filed 7/31/08
Sent to S.C. reporter 10/28/08