

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

ALBERT E. HUDGINS, II

Case No. 2008-02908-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶ 1} 1) On February 15, 2008, at approximately 12:30 a.m., plaintiff, Albert E. Hudgins, II, was traveling north on Interstate 75 near milemarker 27 in Butler County, when his automobile struck a pothole causing tire and rim damage to the vehicle. Plaintiff related that immediately after his property damage occurrence a state trooper from the local Ohio State Highway Patrol Post arrived at the scene and informed him that roadway potholes are an existing problem in the area. Additionally, plaintiff related the two truck drivers who hauled plaintiff's disabled vehicle told him potholes constitute a chronic problem in the area.

{¶ 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 in proper repair. Plaintiff, therefore, filed this complaint seeking to recover \$900.00 for the cost of replacement automobile parts. Plaintiff paid the filing fee.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff's damage event. Defendant denied receiving any prior calls or complaints regarding the particular pothole

located at milemarker 27.0 on Interstate 75 in Butler County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the pothole existed prior to 12:30 a.m. on February 15, 2008. Defendant suggested, "it is likely the pothole existed for only a short time before the incident."

{¶ 4} 4) Furthermore, defendant explained DOT personnel conduct inspections of all state roadways within the county at least two times a month. Apparently no potholes were discovered at milemarker 27 on Interstate 75 the last time that particular section of roadway was inspected prior to February 15, 2008. Defendant's records show numerous pothole patching activities were conducted in the vicinity of plaintiff's incident during the months of December 2007, January 2008, and February 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

{¶ 8} 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 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

[Cite as *Hudgins v. Ohio Dept. of Transp.*, 2008-Ohio-5778.]

[Cite as *Hudgins v. Ohio Dept. of Transp.*, 2008-Ohio-5778.]

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:

Albert E. Hudgins, II
1530 C Hawk Circle
Troy, Ohio 45373

James G. Beasley, Director
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1980 West Broad Street
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RDK/laa
7/1
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