

[Cite as *Jackson v. Ohio Dept. of Transp.*, 2008-Ohio-5780.]

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

MARK A. JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-03386-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

[Cite as *Jackson v. Ohio Dept. of Transp.*, 2008-Ohio-5780.]

FINDINGS OF FACT

{¶ 1} 1) On March 5, 2008, at approximately 7:25 p.m., plaintiff, Mark A. Jackson, was traveling east on Interstate 74 entering the northbound ramp to Interstate 75, when his automobile struck several potholes in the roadway causing tire, rim, and steering damage to the vehicle. Plaintiff submitted photographs depicting a pothole.

{¶ 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 free of hazards. Plaintiff filed this complaint seeking to recover damages in the amount of \$622.57 for automotive repair, replacement parts, and associated expenses resulting from the March 5, 2008 incident. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant denied any liability in this matter based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant noted DOT complaint logs show no pothole complaints were received for the particular defects which DOT located between milemarkers 4.48 and 4.70 on Interstate 75 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence to establish the length of time the potholes existed on Interstate 75 prior to 7:25 p.m. on March 5, 2008. Defendant suggested, "it is likely the pothole existed for only a short time before the incident."

{¶ 4} 4) 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 between mileposts 4.48 and 4.70 on Interstate 75 the last time that section of roadway was inspected before March 5, 2008. DOT records show pothole patching operations were conducted within the vicinity of plaintiff's incident on January 11, 2008, January 16, 2008, February 27, 2008, and March 3, 2008.

{¶ 5} 5) Despite filing a response, plaintiff did not provide any evidence to indicate the length of time the damage-causing potholes existed prior to March 5, 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 conditions or defects 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 potholes.

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

{¶ 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 potholes.

{¶ 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



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MEMORANDUM DECISION

proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing potholes were connected to any conduct under the control of defendant or that there was any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1999), 99-10909-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:

Mark A. Jackson
4415 Colerain Avenue
Cincinnati, Ohio 45223

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

RDK/laa
7/8
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