

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

DANIEL KUDERER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-04986-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 29, 2008, at approximately 7:00 p.m., a 1999 Toyota Corolla owned by plaintiff, Daniel Kuderer, was traveling on State Route 32 in Batavia, Ohio, when the vehicle struck a pothole causing tire damage. Plaintiff submitted photographs depicting the damage-causing pothole. The photographs show a deteriorated pavement condition with pavement material debris strewn about the roadway indicating a newly formed roadway defect.

{¶ 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 defects. Plaintiff filed this complaint seeking to recover \$164.80 for replacement parts costs and related repair expenses. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular pothole prior to the February 29, 2008 property damage occurrence. Defendant asserted plaintiff failed to produce any

evidence to establish the length of time the pothole existed on the roadway before 7:00 p.m. on February 29, 2008. Defendant denied receiving any calls or complaints regarding the pothole which DOT located between mileposts 4.18 and 4.98 on State Route 32 in Clermont County. Defendant suggested “it is likely the pothole existed for only a short time before the incident.” Defendant explained the DOT “Clermont County Manager inspects all state roadways within the county at least two times a month.” Apparently no potholes were discovered between mileposts 4.18 and 4.98 on State Route 32 the last time that section of roadway was inspected before February 29, 2008. DOT records show pothole patching operations were conducted in the vicinity of plaintiff’s damage event on January 28, 2008 and February 14, 2008.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant 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 condition 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.

{¶ 6} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole. Additionally, the trier of fact is precluded from making an inference of defendant’s constructive notice, unless evidence is presented in respect to the time the pothole appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer 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. 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. 578 N.E. 2d 891. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.



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

DANIEL KUDERER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-04986-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

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:

Daniel Kuderer
799 Eight Mile Road
Cincinnati, Ohio 45255

RDK/laa

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

7/17

Filed 8/14/08

Sent to S.C. reporter 11/13/08