

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

MAE JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-03297-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 2, 2008, between 4:00 and 5:00 p.m., plaintiff, Mae Jackson, was traveling west on US Route 30 near Wooster, Ohio, when her automobile struck a series of potholes on the Pittsburgh Avenue bridge causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff asserted that the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway. Plaintiff filed this complaint seeking to recover damages in the amount of \$83.99 for a replacement tire. Plaintiff also requested reimbursement of the \$25.00 filing fee cost. The filing fee was paid. Additionally, plaintiff requested damages in the amount of \$.52 for postage and copying costs. Postage and copying costs are not compensable damage elements in a claim of this type.

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

regarding the particular damage-causing potholes which DOT located at approximately milepost 11.47 on US Route 30 in Wayne County. Defendant asserted that plaintiff failed to provide evidence to establish the length of time that the potholes existed prior to 4:00 p.m. on March 2, 2008. 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.”

{¶ 4} 4) Defendant contended that plaintiff failed to produce any evidence to show that her damage was proximately caused by negligent roadway maintenance on the part of DOT. Defendant related that the DOT “Wayne County Manager conducts roadway inspections of all state roadways within the county on a routine basis, at least one to two times a month.” Apparently, no potholes were discovered at or near milepost 11.47 on US Route 30 the last time that particular section of roadway was inspected before March 2, 2008. Defendant’s records show that no pothole patching operations were conducted in the vicinity of plaintiff’s incident during the six-month period preceding March 2, 2008.

{¶ 5} 5) Although plaintiff was granted a motion for extension of time to submit a response to defendant’s investigation report, the plaintiff has failed to do so.

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 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.

{¶ 8} Plaintiff has not produced sufficient evidence to indicate the length of time

that the particular potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the potholes. 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 potholes appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication that the defendant had constructive notice of the potholes. 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. Size of any 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 potholes.

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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.

MILES C. DURFEY
Clerk

Entry cc:

Mae Jackson
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Wooster, Ohio 44691

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RDK/laa
8/6
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