

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

ROSEMARY A. HOLMES

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-06563-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 30, 2008, at approximately 12:40 a.m., plaintiff, Rosemary A. Holmes, was traveling east on Interstate 480 at milemarker 21.70 in Cuyahoga County, when her 2008 Cadillac STS struck a pothole causing rim and body damage to the vehicle.

{¶ 2} 2) Plaintiff asserted 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 free of hazardous conditions. Plaintiff filed this complaint seeking to recover \$857.07, the total cost of automotive repair she incurred. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff’s March 30, 2008 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff’s car struck, which DOT located at approximately state milemarker 21.70 on Interstate 480 in Cuyahoga County.

Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to March 30, 2008. Defendant suggested “it is likely the pothole existed for only a short time before the incident.” Defendant stated the DOT “Cuyahoga County Manager examines all state roadways within the county at least two times a month.” Apparently, no potholes were discovered at milemarker 21.70 on Interstate 480 the last time that section of roadway was examined prior to March 30, 2008. Defendant’s maintenance records show pothole patching was performed in the vicinity of plaintiff’s incident on January 10, 2008, February 25, 2008, and March 7, 2008. Defendant asserted plaintiff did not provide any evidence to prove her negligent maintenance claim.

{¶ 4} 4) Plaintiff filed a response expressing her belief that the damage to her vehicle was proximately caused by negligence on the part of DOT. Plaintiff described the damage-causing pothole as “huge” and “very deep and wide.” Plaintiff observed the pothole “must have been one that went unrepaired for some time.” Plaintiff also provided a witness statement from a passenger in her car, Gloria Day. Gloria Day recalled the damage-causing pothole was large and the impact of striking it “shook the whole car.” Plaintiff disputed the location of the pothole provided by DOT. Plaintiff located the pothole at “I480/I271 coming from the east on I480 in the transition to I271.” Despite providing a specific location of the pothole plaintiff did not produce any evidence to indicate the length of time this roadway defect existed prior to 12:40 a.m. on March 30, 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 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 incident. *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 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

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:

Rosemary A. Holmes
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RDK/laa
8/25
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