

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

CHARLES HUGHES
Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-05750-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Charles Hughes, stated he was traveling north on Interstate 75, “before exit 13,” when his 2006 Ford Expedition struck “a huge pothole” causing tire and rim damage to the vehicle. Plaintiff recalled the property damage incident occurred on April 12, 2007.

{¶2} 2) Plaintiff implied the damage to his truck was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. Plaintiff filed this complaint seeking to recover \$575.55, the cost of replacement parts, plus \$47.93 for towing expenses incurred resulting from the April 12, 2007 incident. Plaintiff also requested \$25.00 for “fee,” presumed representing a claim for filing fee reimbursement. However, plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole on the roadway prior to plaintiff’s property damage occurrence. Defendant located the damage-causing pothole at milepost 13.00

Case No. 2007-05750-AD	- 1 -	MEMORANDUM DECISION
------------------------	-------	---------------------

(Shepherd Lane Exit) on Interstate 75 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim.

{¶4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff's incident. Defendant explained the DOT Hamilton County Manager conducts roadway inspections, "at least two times a month." Apparently, no potholes were discovered during previous roadway inspections. Defendant suggested the pothole likely, "existed for only a short time before the incident," forming the basis of this claim. Defendant denied DOT employees were negligent in regard to roadway maintenance.

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 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 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.

{¶7} 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

Case No. 2007-05750-AD	- 1 -	MEMORANDUM DECISION
------------------------	-------	---------------------

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

CHARLES HUGHES

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-05750-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:

Charles Hughes
2775 Lafieulle Avenue
Cincinnati, Ohio 45211

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

Columbus, Ohio 43223

RDK/laa

12/19

Filed 1/16/08

Sent to S.C. reporter 2/15/08