

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

MARY K. HUSSEY

Case No. 2007-07507-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Mary K. Hussey, stated that she was traveling east on Interstate 275 in Cincinnati and as she, “proceeded to merge onto the ramp for Exit #46 (Route 42),” her vehicle struck a pothole on the exit ramp causing tire and rim damage. Plaintiff recalled that the described incident occurred on September 6, 2007, at approximately 8:00 a.m.

{¶2} 2) Plaintiff implied that the damage to her automobile was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway area on the exit ramp. Consequently, plaintiff filed this complaint seeking to recover \$534.66, the total cost of automotive repair resulting from the September 6, 2007 incident. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff’s property damage event. Defendant denied receiving any previous reports of a pothole which DOT located at state milepost 46.00 on Interstate 275 in Hamilton County. 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 asserted that plaintiff failed to produce evidence to show

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DOT negligently maintained the roadway. Defendant explained that the DOT Hamilton County Manager, “conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month.” Apparently no potholes were discovered at milepost 46.00 on Interstate 275 the last time this roadway was inspected prior to September 6, 2007. Defendant’s records show pothole patching operations were conducted in the vicinity of milepost 46.00 on Interstate 275 on April 17, 2007, May 15, 2007, and July 13, 2007. Defendant related that if the particular damage-causing pothole had been detected by DOT the particular defendant, “would have bee promptly scheduled for repair.”

CONCLUSIONS OF LAW

{¶15} 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.

{¶16} 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.

{¶17} 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 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

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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. 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.

MILES C. DURFEY
Clerk

Entry cc:

Mary L. Hussey
8914 E. Kemper Road
Cincinnati, Ohio 45249

RDK/laa

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

12/18

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