

# 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

JASON JARVIS

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-05648-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On March 31, 2008, at approximately 9:30 p.m, plaintiff, Jason Jarvis, was traveling south on State Route 315, “just north of Old Woods Rd.” in Franklin County, when his 2008 Nissan Maxima struck “a large unfilled pothole” causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff asserted that his property damage 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 \$181.42, the cost of a replacement tire. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff’s property damage event. Defendant denied receiving any prior calls or complaints about the particular pothole which DOT located near milepost 13.29 on State Route 315 in Franklin County. Defendant asserted that plaintiff did not produce any evidence to establish the length of time the pothole existed prior to March 31, 2008.

{¶ 4} 4) Furthermore, defendant contended that plaintiff failed to produce evidence to show that DOT negligently maintained the roadway. Defendant explained that the DOT Franklin 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 13.29 on State Route 315 the last time this section of roadway was inspected before March 31, 2008. Defendant advised if any DOT personnel would have detected potholes the particular defects would have been “promptly scheduled for repair.” DOT records show potholes were repaired in the general vicinity of plaintiff’s incident on March 31, 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 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.

{¶ 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 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 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 him or that his 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Jason Jarvis  
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RDK/laa  
9/11  
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