[Cite as *Cook v. Ohio Dept. of Transp.*, 2008-Ohio-7018.]

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

CHRISTOPHER S. COOK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-07108-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Christopher S. Cook, file this claim against defendant, Department of Transportation ("DOT"), alleging his 2005 Cadillac CTS was damaged as a proximate cause of negligence on the part of DOT in failing to maintain US Route 23 in Chillicothe, Ohio free of roadway defects. Specifically, plaintiff asserted his car was damaged as a result of striking a pothole located "at (the) intersection of State Route 23 North (North Bridge Street) and Route 35 East" in Chillicothe, Ohio. Plaintiff described the property damage incident noting: "[O]n Saturday morning, July 28, 2007, at approximately 9:30 a.m., I was traveling southbound in the middle lane, almost below the traffic control device, at the intersection of North Bridge Street and the off-ramp from Route 35 East, when my car hit an enormous pothole" causing substantial damage to the tire, rim, and body of the vehicle. Plaintiff pointed out that he was informed by an unidentified individual that the damage-causing pothole had existed on the roadway since at least Thursday, July 26, 2007. Plaintiff contended defendant should bear responsibility for the damage to his car and he has consequently filed this complaint

seeking to recover $1,799.00, the total cost of automotive repair. The filing fee was paid.

{¶ 2} 2) Defendant located the damage-causing pothole at milepost 0.97 on State Route 159 in Ross County near a roadway construction area maintained by DOT contractor, Shelly & Sands, Inc. Defendant explained the roadway section of State Route 159 where the pothole was located overlaps with US Route 23 "and this area of roadway in question was under construction." According to information supplied by Shelly & Sands, Inc., the damage-causing pothole was located outside the construction project limits by twenty-five feet and was consequently under the maintenance responsibility of the City of Chillicothe. Defendant submitted photographs depicting the pothole location after the defect had been repaired. Defendant made notations on these photographs indicating the repaired pothole was located outside the construction project limits. DaNielle Taylor, the Safety/Loss Control representative for Shelly & Sands, Inc., recorded that the particular pothole was under the maintenance responsibility of the City of Chillicothe and city personnel were notified about the pothole, but there was no response. Taylor also recorded "ODOT did attempt to get the pothole filled with the asphalt provided by Shelly & Sands."

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the pothole on State Route 159 prior to plaintiff's July 28, 2007 property damage occurrence. Defendant stated DOT "did not receive any complaints or otherwise have notice of subject condition prior to Plaintiff Cook's incident." Defendant asserted plaintiff did not offer any evidence "to indicate how long the pothole existed in the roadway prior to his incident." Defendant submitted a copy of a DOT "Customer Calls-Complaints" log for Ross County covering June and July 2007. An entry on this log dated July 20 noted an individual identified as LeRoy Tull made a telephone report regarding the same pothole that subsequently damaged plaintiff's vehicle. The entry of this telephone report recorded "at end of ramp-from 25 W @ 159/Bridge, there is a large hole in roadway. Needs attention." A notation was made on the log "Date of ODOT Response 7/24" with the matter being referred to DOT inspector Tim Dobbins for resolution. State Route 159 had previously been inspected by DOT Ross County Transportation Manager, Bill Pickerell on July 9, 2007 and no potholes were discovered on that section of roadway.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} In order to recover in a suit involving damage proximately caused by roadway conditions plaintiff must prove that either: 1) defendant had actual or constructive notice of the condition 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. Evidence in the instant claim has shown defendant received actual notice of the damage-causing pothole eight days prior to plaintiff's incident. Based on the rationale of both *McClellan* and *Denis*, defendant is liable for all damages claimed. Evidence has shown DOT had actual notice of the damage-causing pothole and failed to respond in a reasonable time after receiving this notice. See *Miller v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-0547-AD, 2005-Ohio-5384. Defendant is liable to plaintiff for the damages claimed, $1,799.00, plus the $25.00 filing fee which may be awarded as costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $1,824.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Christopher S. Cook
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James G. Beasley, Director
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RDK/laa
9/11
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