[Cite as *Stark v. Ohio Dept. Transp.*, 2008-Ohio-7068.]

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

ALBERT STARK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-05486-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 22, 2008, at approximately 10:20 p.m., plaintiff, Albert Stark, was traveling north on State Route 252 between milepost 3.0 and 4.0 in Lorain County, when his automobile struck a pothole causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff implied 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 $1,090.88, the total cost of automotive repair incurred resulting from the March 22, 2008 incident. The $25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's damage

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occurrence. Defendant denied receiving any previous calls or complaints regarding the particular pothole, which DOT located between mileposts 3.0 and 4.0 on State Route 252 in Lorain County. Defendant asserted that plaintiff did not produce any evidence to establish the length of time that the pothole was present on the roadway before 10:20 p.m. on March 22, 2008. 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 the time of the incident."

{¶ 4} 4) Defendant contended that plaintiff failed to prove his damage was proximately caused by negligent maintenance on the part of DOT. Defendant explained that the DOT "Lorain County Manager inspects all state roadways within the county on a routine basis, at least one to two times a month." Apparently no potholes were discovered between mileposts 3.0 and 4.0 on State Route 252 the last time that specific section of roadway was inspected prior to March 22, 2008. DOT records show that pothole repairs were conducted in the vicinity of plaintiff's damage occurrence on December 24, 2007, February 8, 2008, and February 19, 2008. Defendant stated "that if ODOT personnel had detected any further defects they would have been reported and promptly scheduled for repair."

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 that 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 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

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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.

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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:

Albert Stark
7110 Big Creek Pkwy.

James G. Beasley, Director
Department of Transportation

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