

# 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

RUTH WHITELEATHER ORRELL

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-09066-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On August 8, 2008, plaintiff, Ruth Whiteleather-Orrell, was traveling west on State Route 172 between New Garden and Rochester Road in Columbiana County, when her 2001 BMW 325I struck a pothole causing rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$232.09 for replacement parts and automotive repair resulting from the August 8, 2008 property damage event. Plaintiff implied that the damage to her vehicle was caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 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 damage occurrence. Defendant located the damage-causing pothole “at milepost 5.33 on SR 172 in Columbiana County.” Defendant asserted that plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim. Defendant suggested that, “it is likely the pothole existed for only a short

time before the incident.”

{¶ 4} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff’s incident. Defendant explained that DOT employees conduct roadway inspections, “at least two times a month.” Apparently no potholes were discovered during previous roadway inspections. Defendant denied that DOT employees were negligent in regard to roadway maintenance. Defendant’s records show pothole maintenance operations were conducted on State Route 172 in the vicinity of plaintiff’s incident on June 30, 2008. Plaintiff has not submitted evidence to establish the length of time that the pothole existed prior to her property damage event.

{¶ 5} 5) Plaintiff filed a response expressing her belief defendant should be held liable for the property damage she sustained when her car struck the pothole on State Route 172. Plaintiff did not offer any evidence to indicate the length of time the pothole was present on the roadway prior to August 8, 2008.

#### CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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 for this claim. Plaintiff has not shown that 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 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, 587 N.E. 2d 891. Therefore, defendant is not liable for any damage that 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
11/20  
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