[Cite as *Nash v. Ohio Dept. of Transp.*, 2008-Ohio-5913.]

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

SHARON NASH

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-04111-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Sharon Nash, filed this complaint against defendant, Department of Transportation ("DOT"), seeking to recover damages for automotive repair costs she incurred as a result of her automobile striking potholes on two separate occasions. Plaintiff stated she was "(d)riving to work in rush hour on state route 256 north bound I hit a pothole before entering the freeway (I-70 West) causing damage to my left rear rim." Plaintiff further stated, "[a]lso coming home from work 70-East bound to 256 south bound I hit another large pothole on the exit ramp to 256 Southbound causing additional damage to my left rear rim." Evidence has shown both described incidents occurred on March 25, 2008.

{¶ 2} 2) Plaintiff asserted the damage to her car 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 damages in the amount of $414.94, the total cost of a replacement rim for a 2002 Toyota Avalon. The $25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 3} 3) Defendant explained that according to information supplied by plaintiff the location of the first pothole her car struck was at county milepost 1.19 on Interstate 70 at State Route 256, which is within the maintenance jurisdiction of the city of Pickerington and not the responsibility of DOT. In regard to the second pothole, defendant denied liability for plaintiff's property damage based on the contention that no DOT personnel had any knowledge of the particular pothole prior to March 25, 2008. Defendant denied receiving any prior calls or complaints about the pothole, which DOT located "at county milepost 1.19 or state milepost 112.40 on I-70 in Fairfield County." Defendant asserted plaintiff did not produce any evidence to establish the length of time the pothole existed before March 25, 2008. Defendant suggested, "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) Furthermore, defendant asserted plaintiff failed to offer evidence to prove her property damage was caused by negligence maintenance. Defendant pointed out DOT "Licking County Manager conducts roadway inspections of I-70 in

Fairfield County on a routine basis, at least twice a week for potholes." Apparently, no potholes were discovered at milepost 112.40 on Interstate 70 the last time that particular section of roadway was inspected before March 25, 2008. Defendant submitted a copy of correspondence from DOT Licking County Manager, James Valentine, referencing his inspection of the vicinity where plaintiff's incident occurred. In the April 17, 2008 correspondence, Valentine noted: "I have checked again the south bound ramp to Sr 256 from I-70 east bound and we have had no potholes on this ramp." Valentine did observe potholes "on the main-line through lanes of I-70 west and east of this exit ramp." Defendant's records show DOT crews patched potholes in the vicinity of plaintiff's damage occurrence on December 18, 2007, January 16, 2008, February 6, 2008, and February 7, 2008. No repair work was done in the immediate vicinity between February 8, 2008 and March 25. 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 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

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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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
laa
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