

# 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

FAITH M. BODDE

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-10081-AD

Clerk Miles C. Durfey

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On August 16, 2008, at approximately 10:30 a.m., plaintiff, Faith M. Bodde, was traveling east on State Route 2 near milemarker #30 in Erie County, when her automobile struck a pothole causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff asserted that her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway. Consequently, plaintiff filed this complaint seeking to recover \$359.68, the cost of replacement parts. Plaintiff submitted the \$25.00 filing fee.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant denied receiving any calls or complaints about the particular pothole which DOT located at milemarker 30.00 on State Route 2 in Erie County. 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 plaintiff's incident." Defendant contended that plaintiff did not produce any evidence to establish the length of time the pothole existed prior to the August 16, 2008 property damage occurrence.

{¶ 4} 4) Defendant denied that the roadway was negligently maintained.

Defendant explained that DOT Erie 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 milemarker 30.00 on State Route 2 the last time that section of roadway was inspected prior to August 16, 2008. Defendant’s records show that pothole patching operations were conducted by DOT crews in the vicinity of plaintiff’s incident on March 13, 2008, March 17, 2008, April 9, 2008, April 18, 2008, and June 5, 2008. Defendant explained that if any DOT employees would have discovered potholes during roadway inspections the defects “would have been promptly scheduled for repair.”

{¶ 5} 5) Despite filing a response, plaintiff did not offer any evidence to establish the length of time the particular damage-causing pothole existed prior to 10:30 a.m. on August 16, 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 of 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 that 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 that defendant had

constructive notice of the pothole. 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. 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.

## 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](http://www.cco.state.oh.us)

FAITH M. BODDE

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-10081-AD

Clerk Miles C. Durfey

### 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

Entry cc:

Faith M. Bodde  
1070 State Street  
Vermilion, Ohio 440896

James G. Beasley, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
1/14  
Filed 2/12/09  
Sent to S.C. reporter 5/21/09