

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

BARBARA JAMES

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 4

Defendant

Case No. 2009-03495-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) During the early evening of February 13, 2009, plaintiff, Barbara Jones, was traveling east on State Route 305 in Trumbull County, when her 2000 Cadillac Deville struck two potholes in the roadway causing tire damage to the vehicle. Plaintiff submitted two photographs depicting the damage-causing potholes. The defects shown are massive in size and the roadway surface in general appears to be in a highly deteriorated condition.

{¶ 2} 2) Plaintiff implied her 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 \$151.76, the total cost of automotive repair incurred resulting from the February 13, 2009 incident. 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 damage-causing potholes prior to plaintiff’s property damage occurrence. Defendant denied receiving any previous calls or complaints regarding the particular potholes, which DOT located between mileposts

0.00 and 1.59 on State Route 305 in Trumbull County. Defendant asserted plaintiff did not produce any evidence to establish the length of time the potholes were present on the roadway before February 13, 2009. Defendant suggested “it is likely the pothole existed for only a short time before the incident.”

{¶ 4} 4) Defendant contended plaintiff failed to prove her damage was proximately caused by negligent maintenance on the part of DOT. Defendant explained the DOT “Trumbull County Manager inspects all state roadways within the county at least two times a month.” Apparently no potholes were discovered between mileposts 0.00 and 1.59 on State Route 305 the last time that specific section of roadway was inspected prior to February 13, 2009. DOT records show pothole repairs were conducted in the vicinity of plaintiff’s damage occurrence on December 16, 2008, December 30, 2008, January 26, 2009, and February 3, 2009.

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 the particular potholes were on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the potholes. 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 potholes 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 potholes. 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 damage that plaintiff may have suffered from the potholes.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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