

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

MALLORY A. YAJKO

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-09856-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On July 19, 2008, at approximately 3:30 p.m., plaintiff, Mallory A. Yajko, was traveling south on State Route 11, “approximately .5 mi. North of the Leetonia/Columbia Exit (OH-344),” when her 2002 Mitsubishi Eclipse struck “a tremendously large pothole” causing rim damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$197.95 for replacement parts and automotive repair resulting from the July 19, 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 prior to plaintiff’s property damage occurrence. Defendant located the damage-causing pothole at “milepost 2.76 on SR 11 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 no pothole maintenance operations were conducted on State Route 11 in the vicinity of plaintiff’s incident from February 1, 2008 to July 19, 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 11. Plaintiff did not offer any evidence to indicate the length of time the pothole was present on the roadway prior to July 19, 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 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 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.

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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
1/14
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