

# 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

TERESA R. STEWART

Plaintiff

v.

DEPT. OF TRANSPORTATION, DIST. 11

Defendant

Case No. 2009-02880-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On February 6, 2009, at approximately 8:00 p.m., plaintiff, Teresa R. Stewart, was traveling north on Interstate 77 “exiting to the off ramp at Stone Creek” when her 2001 Honda Accord struck a large pothole causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff implied that the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to adequately maintain the roadway in regard to pothole repair. Plaintiff filed this complaint seeking to recover \$368.06, her total cost for automotive repair expenses resulting from the February 6, 2009 incident. The 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 event. Defendant denied receiving any previous reports of a pothole which DOT located at state milepost 73.1 on Interstate 77 in Tuscarawas 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.”

{¶ 4} 4) Defendant asserted that plaintiff failed to produce evidence to show that DOT negligently maintained the roadway. Defendant explained that the DOT Tuscarawas 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 milepost 73.1 on Interstate 77 the last time this roadway was inspected prior to February 6, 2009. Defendant’s records show that pothole patching operations were conducted in the vicinity of milepost 73.1 on October 10, 2008. Defendant related that if the particular damage-causing pothole had been detected by DOT employees, the defect “would have been promptly scheduled for repair.”

{¶ 5} 5) Plaintiff filed a response asserting the pothole her vehicle struck was not repaired in a timely manner. Plaintiff contended defendant should be held liable for the damage to her car caused by the pothole. Plaintiff did not produce any evidence to indicate the length of time the pothole existed at milepost 73.1 on Interstate 77 prior to February 6, 2009.

#### 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 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..

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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:

Teresa R. Stewart  
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RDK/laa  
5/18  
Filed 5/26/09  
Sent to S.C. reporter 9/29/09