

# 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

JOHN PATRICK RADEMACHER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 8

Defendant

Case No. 2009-02791-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On February 13, 2009, at approximately 10:00 p.m., plaintiff, John Patrick Rademacher, was traveling north on Interstate 71 in Hamilton County, when his 2008 Mazda 3 struck a pothole causing tire and rim damage to the vehicle. Plaintiff described the damage incident stating, “[w]hile merging onto I-71 NB from the E. McMillan St. ramp I hit a very large and deep pothole that covered a significant portion of the entry ramp.” Plaintiff submitted photographs depicting the damage-causing pothole. The pothole depicted is massive in size.

{¶ 2} 2) Plaintiff asserted the damage to his vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of hazardous conditions such as the pothole on Interstate 71. Plaintiff filed this complaint seeking to recover \$824.10, the total cost of replacement parts and repair expenses he incurred resulting from the February 13, 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 on the roadway prior to plaintiff's property damage occurrence. Defendant located the damage-causing pothole at milepost 3.20 on Interstate 71 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the pothole existed prior to the incident forming the basis of this claim. Defendant denied receiving any calls or complaints regarding the particular pothole prior to February 13, 2009.

{¶ 4} 4) Furthermore, defendant contended that plaintiff failed to produce evidence to show that DOT negligently maintained the roadway. Defendant explained that the DOT Hamilton 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 3.20 on Interstate 71 the last time that this section of roadway was inspected before February 13, 2009. Defendant advised that if any DOT personnel would have detected potholes the particular defects would have been "promptly scheduled for repair." DOT records show that potholes were repaired in the generally vicinity of plaintiff's incident on August 11, 2008. Seemingly, no other repairs were needed in the area of milepost 3.20 on Interstate 71 between the period of August 11, 2008 to February 13, 2009.

{¶ 5} 5) Despite filing responses, plaintiff did not provide any evidence to show the length of time that the particular damage-causing pothole existed prior to 10:00 p.m. on February 13, 2009. Plaintiff stated that "I do not have direct knowledge of the age of the pothole or the expertise to determine the length of time it takes to create a pothole of such significant size." Plaintiff pointed out that defendant did not submit any inspection records referencing when the specific section around milepost 3.20 on Interstate 71 was last inspected prior to February 13, 2009. Plaintiff disputed defendant's contention that roadway inspections were conducted on a routine basis. Plaintiff suggested defendant did not conduct any roadway inspection during the period from August 11, 2008 to February 13, 2009.

{¶ 6} 6) On May 20, 2009, defendant filed a reply to plaintiff's response. Defendant provides a "Maintenance History from August 1, 2008 to February 13, 2009" for the section of highway in question.

#### CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} Plaintiff has not shown, by a preponderance of the evidence, that

defendant failed to discharge a duty owed to him or that his 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

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:

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RDK/laa  
5/12  
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