

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

EDWIN L. FEARER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2009-01620-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On December 25, 2008, at approximately 9:30 p.m., plaintiff, Edwin L. Fearer, was traveling north on State Route 306, “between Pettibone and Taylor May Rd.” in Geauga County, when his 1998 Dodge Caravan struck “a very large pothole” causing wheel and wheel cover damage to the vehicle.

{¶ 2} 2) Plaintiff implied the damage to his van was proximately caused by negligence on the part of defendant, Department of Transportation (ODOT), in failing to maintain the roadway free of defects. Plaintiff filed this complaint seeking to recover damages in the amount of \$121.28, representing the complete expense he incurred for replacement parts. Plaintiff paid the \$25.00 filing fee.

{¶ 3} 3) Defendant denied liability based on the contention that no ODOT personnel had any knowledge of the particular pothole on the roadway prior to plaintiff’s property damage event. Defendant denied receiving any prior calls or complaints about the pothole which ODOT located between mileposts 1.00 and 1.50 on State Route 306

in Geauga County. Defendant asserted plaintiff did not offer any evidence to establish the length of time the pothole was on the roadway before 9:30 p.m. on December 25, 2008. Defendant suggested, “it is likely the pothole existed for only a short time before the incident.”

{¶ 4} 4) Defendant contended plaintiff failed to prove his damage was proximately caused by negligent maintenance on the part of ODOT. Defendant explained the ODOT “Gauga County Manager inspects all state roadways within the county on a routine basis, at least two times a month.” Apparently no potholes were discovered between mileposts 1.00 and 1.50 on State Route 306 the last time that specific section of roadway was inspected prior to December 25, 2008.

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 that the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown 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 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 plaintiff may have suffered from the pothole.

Case No. 2006-03532-AD

- 4 -

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- 4 -

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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
10/8
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