

[Cite as *Quast v. Ohio Dept. of Transp.*, 2005-Ohio-6276.]

IN THE COURT OF CLAIMS OF OHIO

BETH QUAST :  
Plaintiff :  
v. : CASE NO. 2005-04802-AD  
DEPT. OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} On March 13, 2005, plaintiff struck a pothole with the Jeep she was driving while traveling southbound on Interstate 71. Plaintiff asserts the damage to her vehicle was caused by negligence on the part of defendant in maintaining the roadway in a safe drivable condition. Plaintiff sought damages for the repair of her vehicle as well as rental car expenses.

{¶ 2} On the same day after plaintiff's Jeep was damaged, she drove another vehicle, a BMW 325i back to her original destination since the Jeep was not drivable. On the return trip, she struck another pothole while traveling on Interstate 71 North outside of Lodi, Ohio. Plaintiff seeks damages for a broken rear wheel, wheel mounting and installation, and car rental expenses as the result of the alleged negligence of defendant in maintaining the roadway.

{¶ 3} On June 10, 2005, the parties submitted a settlement agreement concerning the damage-causing incident with the BMW 325i. Both parties agreed to settle this matter for \$403.97. A judge of the Court of Claims approved this settlement on June 17, 2005, with costs being assessed against defendant.

{¶ 4} On May 20, 2005, defendant filed an investigation report concerning the property damage event with the Jeep. Defendant asserts it received no notice of the existence of a pothole at "county milepost 8.08 or state milepost 186.7 on I-71 in Ashland County," prior to the incident forming the basis of this claim. Defendant stated that "defendant's Ashland County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month. Defendant maintains that if ODOT personnel had detected any defects they would have been promptly scheduled for repair." Finally, defendant asserts it had no way of knowing how long the pothole existed on the roadway prior to the incident and only one pothole patching operation was conducted in the general vicinity in the past six months. For the foregoing reasons, defendant contends it should not be liable for the damage caused to plaintiff's Jeep.

{¶ 5} Plaintiff has not filed a response to defendant's investigation report, nor submitted any evidence to establish the length of time the pothole existed prior to the March 13, 2005, property damage event.

#### 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. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 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. 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.

{¶ 8} There is no evidence defendant had actual notice of the damage-causing pothole.

{¶ 9} 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 defective condition (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 10} 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 297.

{¶ 11} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (pothole) appears, so that under the circumstances, defendant should have acquired knowledge of the existence of the defect. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶ 12} Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

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BETH QUAST	:	
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v.	:	CASE NO. 2005-04802-AD
DEPT. OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : : :

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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