

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

DWAYNE DUBOIS

Plaintiff

v.

DEPT. OF TRANSP.

Defendant

Case No. 2009-03185-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 2, 2009, plaintiff, Duane DuBois, was traveling south on Interstate 75 from Mitchell Avenue in Hamilton County, when his 2004 Mazda struck a pothole causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of hazards such as potholes. Plaintiff filed this complaint seeking to recover damages in the amount of \$137.37, the cost of a replacement tire. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff’s March 2, 2009 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff’s car struck, which DOT located at approximately milemarker 6.46 on Interstate 75 in Hamilton County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to March 2, 2009. Defendant suggested “it is

likely the pothole existed for only a short time before the incident.” Defendant stated the DOT “Hamilton County Manager inspects all state roadways within the county at least two times a month.” Apparently no potholes were discovered at milemarker 6.46 on Interstate 75 the last time that section of roadway was inspected prior to March 2, 2009. Defendant asserted plaintiff failed to produce evidence to establish the roadway was negligently maintained.

CONCLUSIONS OF LAW

{¶ 4} 1) Defendant has the duty to maintain the 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.

{¶ 5} 2) 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.

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

{¶ 7} 4) 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. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. No evidence of constructive notice has been produced.

{¶ 8} 5) 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.

{¶ 9} 6) Plaintiff has failed to show that the proximate cause of his damage was connected to any conduct under the control of defendant, or that defendant was

negligent in maintaining the roadway area. *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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Dwayne Dubois
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RDK/laa
6/18
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Jolene M. Molitoris, Director
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