

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

STEVE COLLIER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-07713-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On May 15, 2008, at approximately 10:00 p.m., plaintiff, Steve Collier, was traveling on the Interstate 275 West exit ramp from Interstate 75 North in Hamilton County, when his automobile struck “an oversized pothole” causing tire and rim damage to the vehicle, a 2007 Cadillac STS. Plaintiff pointed out that the specific roadway area where his damage incident occurred was located within a construction zone where barriers had been erected along both sides of the road. Plaintiff stated, “[t]he road was extremely rough with bumps and holes.”

{¶ 2} 2) Plaintiff asserted that 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. Plaintiff filed this complaint seeking to recover \$547.65, the cost of automotive repair. The filing fee was paid.

{¶ 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 May 15, 2008 property damage occurrence. Defendant denied receiving prior

calls or complaints about the pothole plaintiff's car struck, which DOT located at approximately milemarker 16.80 on Interstate 75 in Hamilton County. Defendant asserted that plaintiff did not produce any evidence to indicate the length of time that the damage-causing pothole existed prior to May 15, 2008. Defendant suggested that "it is likely the pothole existed for only a short time before the incident." Defendant stated that 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 16.80 on Interstate 75 the last time that section of roadway was inspected prior to May 15, 2008. Defendant's maintenance records show that pothole patching was performed in the vicinity of plaintiff's incident on December 18, 2007 and March 14, 2008. Defendant asserted that plaintiff did not provide any evidence to prove his negligent maintenance claim.

{¶ 4} 4) Plaintiff filed a response noting that the roadway was under construction at the time of his damage occurrence and consequently, "[t]he lanes were changed many times without a solid pavement base." Plaintiff further noted that "[t]he area is heavily traveled and potholes were a constant problem." Plaintiff contended that defendant "was knowledgeable of the pothole because they repaired it within 12 hours of my incident." Plaintiff did not present evidence to establish the length of time the damage-causing pothole existed prior to 10:00 p.m. on May 15, 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. No evidence has been shown that defendant had actual notice of the damage-causing pothole.

{¶ 7} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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 developed. *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 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.

{¶ 8} Plaintiff, in the instant claim, has not produced sufficient 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. 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.

MILES C. DURFEY

Entry cc:

Steve Collier
5509 Randy Drive
Fairfield, Ohio 45014

James G. Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
10/21
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