

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

ANDRÉ PARKS

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-01456-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 7, 2008, plaintiff, André Parks, was traveling east on Interstate 275 at US Route 52 in Hamilton County, when his automobile struck a pothole causing substantial damage to the vehicle. Plaintiff submitted photographs depicting the damage to his car.

{¶ 2} 2) Plaintiff implied his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to keep Interstate 275 free of roadway defects. Plaintiff filed this complaint seeking to recover \$1,382.64, the total cost of automotive repair and replacement parts resulting from the described 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 prior to plaintiff’s property damage event. Defendant denied receiving any previous reports of a pothole which DOT located at state milepost 70.88 on Interstate 275 in Hamilton County. Defendant suggested that, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.” Defendant acknowledged previous complaints were received concerning “a dip in the roadway at a bridge approach” at milepost 71.42 on Interstate 275. The prior complaints were received on August 30,

2007 and September 25, 2007. Defendant asserted the problem with the roadway at the bridge approach which was found to consist of “three inches of settlement at the junction of the approach slab and the first pavement section” was corrected by a contractor in October 2007. The correction involved placing asphalt wedging on the roadway.

{¶ 4} 4) Defendant argued plaintiff failed to produce sufficient evidence to establish the roadway was negligently maintained. Defendant submitted records showing no pothole repairs were conducted near milepost 70.88 on Interstate 275 during the six-month period preceding plaintiff’s January 7, 2008 damage occurrence. Pothole patching was performed at other locations on Interstate 275 in Hamilton County from July through December 2007. Defendant advised that the concrete roadway pavement on Interstate 275 “is in excellent condition.” Defendant denied breaching any duty owed to the motoring public in regard to roadway repair.

{¶ 5} 5) Plaintiff filed a response insisting his car was damaged from striking a pothole on Interstate 275 East at U.S. Route 52. Plaintiff did not submit any evidence to indicate the length of time the pothole existed prior to his January 7, 2008 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, 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 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 that the defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence of constructive notice of the pothole.

{¶ 10} 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.

{¶ 11} 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.* (1999), 99-10909-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

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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:

André Parks
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James G. Beasley, Director
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RDK/laa

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