

[Cite as *Burton v. Ohio Dept. of Transp.*, 2003-Ohio-113.]

IN THE COURT OF CLAIMS OF OHIO

DIANE L. BURTON	:	
1428 Bell Road	:	
S. Russell, Ohio 44022	:	Case No. 2002-08602-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
DEPARTMENT OF TRANSPORTATION	:	
Defendant	:	

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

For Defendant: Gordon Proctor, Director
 Department of Transportation
 1980 West Broad Street
 Columbus, Ohio 43223

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

FINDINGS OF FACT

{¶1} 1) On August 12, 2002, plaintiff, Diane L. Burton, was traveling west on Interstate 480 near the Northfield Road overpass in Cuyahoga County when her automobile struck a pothole causing tire and rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$673.16, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence.

{¶4} 4) Plaintiff has not submitted any evidence to indicate

the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show nine pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-month period preceding plaintiff's property damage event.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶7} 2) In order to recover on a claim of this type, plaintiff must prove 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} 3) There is no evidence that defendant had actual notice of the damage-causing pothole.

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

{¶10} 5) Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287.

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

{¶12} 7) No evidence has shown defendant had constructive notice of the pothole.

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

{¶14} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶17} 2) The court shall absorb the court costs in this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

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