

[Cite as *White v. Ohio Dept. of Transp., Dist. 10, 2004-Ohio-3654.*]

IN THE COURT OF CLAIMS OF OHIO

RICHARD WHITE :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2004-04361-AD  
 :  
 OHIO DEPARTMENT OF : MEMORANDUM DECISION  
 TRANSPORTATION, DISTRICT 10 :  
 :  
 Defendant :  
 :::::::::::::::

FINDINGS OF FACT

{¶1} 1) On March 15, 2004, plaintiff, Richard White, was traveling north on State Route 555 near milepost 9.94 in Washington County when his automobile struck a broken dislodged center line reflector causing tire and rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$369.29, the cost of automotive repair and related expenses, which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway. Plaintiff also seeks recovery of the \$25.00 filing fee.

{¶3} 3) Defendant denied liability based on the fact it had no knowledge the reflector was broken and detached prior to plaintiff's property-damage occurrence. Defendant asserted its employees conducted inspection operations in the area of plaintiffs' incident on many occasions prior to March 15, 1004, and did not discover any loose pavement markers.

{¶4} 4) On May 18, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the reflector was defective prior to the incident forming the basis of this claim. Plaintiff asserts he should be granted damages under the doctrine of res ipsa loquitor.

#### CONCLUSIONS OF LAW

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

{¶6} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the dislodged reflector 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.

{¶7} 3) There is no evidence defendant had actual notice of the loose pavement marker.

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

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

{¶10} 6) No evidence has shown defendant had constructive notice of the loose pavement marker.

{¶11} 7) The doctrine of res ipsa loquitor is not applicable in this situation.

{¶12} 8) Furthermore, plaintiff has failed to show defendant negligently maintained its highways.

{¶13} 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:

Richard White  
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Plaintiff, Pro se

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For Defendant

DRB/RDK/laa  
5/25  
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