[Cite as *Nickoson v. Ohio Dept. of Transp., Dist. 4,* 2007-Ohio-4870.]

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

ARNOLD E. NICKOSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 4

Defendant

Case No. 2007-02769-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On February 20, 2007, at approximately 9:15 a.m., plaintiff, Arnold E. Nickoson, was traveling east on US Route 62 in Stark County, when his automobile struck a water-filled pothole causing tire and rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover $500.00 which is his insurance deductible for automotive repair costs resulting from the February 20, 2007, incident. Plaintiff contended that his property damage was proximately caused by negligence on the part of defendant Department of Transportation (DOT) in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the basis that it had no knowledge of the damage-causing pothole prior to plaintiff's incident. Defendant denied receiving any complaints about the pothole which DOT located "between state mileposts 23.69 and 23.83 in Stark County," on US 62. Defendant explained, "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."

{¶4} 4) Plaintiff did not submit any evidence to establish the length of time the pothole existed prior to the February 20, 2007, property damage event.

{¶5} 5) Furthermore, defendant explained that DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired. Defendant contended that plaintiff did not produce sufficient evidence to prove that DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

CONCLUSIONS OF LAW

{¶6} 1) 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. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶7} 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. 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.

{¶8} 3) There is no evidence 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 defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no evidence defendant had constructive notice of the pothole.

{¶10} 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶11} 6) Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury 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 or its agents. *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
Clerk

Entry cc:

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RDK/laa
6/13
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