

[Cite as *Bailey v. Ohio Dept. of Transp., Dist. 6, 2004-Ohio-150.*]

IN THE COURT OF CLAIMS OF OHIO

| | | |
|----------------------------|---|----------------------------|
| MARY A. BAILEY | : | |
| | : | |
| Plaintiff | : | |
| | : | |
| v. | : | CASE NO. 2003-07341-AD |
| | : | |
| OHIO DEPARTMENT OF | : | <u>MEMORANDUM DECISION</u> |
| TRANSPORTATION, DISTRICT 6 | : | |
| | : | |
| Defendant | : | |
| | : | |
| | : | |

FINDINGS OF FACT

{¶1} “1) On June 11, 2003, plaintiff, Mary A. Bailey, was traveling on State Route 257 in Delaware County, when her automobile struck a pothole located on the berm area of the roadway. As a result of striking the pothole, plaintiff sustained tire, rim, and tie rod damage.

{¶2} “2) Plaintiff filed this complaint seeking to recover \$616.60, the cost of automotive repair. Plaintiff submitted the filing fee with the complaint.

{¶3} “3) Defendant submitted an investigation report denying liability.

{¶4} CONCLUSIONS OF LAW

{¶5} “1) This court has previously held that the Department of Transportation is not to be held liable for damages sustained by individuals who used the berm or shoulder of a highway for travel without adequate reasons. *Colagrossi v. Department of Transportation* (1983), 82-06474-AD.

{¶6} “2) The shoulder of a highway is designed to serve a purpose which may include travel under emergency circumstances. It is for the trier of fact to determine whether driving on the shoulder is a foreseeable and reasonable use of the shoulder of the

highway. *Dickerhoof v. City of Canton* (1983), 6 Ohio St. 3d 128. In the case at bar, plaintiff has offered no reasonable explanation or excuse for using the berm of the highway.

{¶7} “3) Plaintiff, in the instant case, has shown no adequate reason for the driver’s action of driving on the berm of the highway, consequently, based on the rationale of *Colagrossi*, supra, this case is denied. If a plaintiff sustains damage because of a defect located off the marked, regularly traveled portion of a roadway, a necessity for leaving the roadway must be shown. *Lawson v. Jackson* (1977), 75-0612-AD. Inadvertent travel based on inattention is not an adequate reason or necessity for straying from the regularly traveled portion of the roadway. *Smith v. Ohio Department of Transportation* (2000), 2000-05151-AD.

{¶8} 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Mary A. Bailey
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Ostrander, Ohio 43061

Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

DRB/RDK/laa
12/18
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