

# 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

BRYAN BLACK

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-06822-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On March 5, 2008, at approximately 6:45 a.m., plaintiff, Bryan Black, was traveling west/southwest on State Route 264 in Hamilton County, when his 2000 Chrysler Cirrus struck a large pothole in the traveled portion of the roadway causing tire, rim, and suspension damage to the vehicle. Plaintiff located the damage-causing pothole on Bridgetown Road (State Route 264) “about 50 ft. after Miami Heights Elementary School and about 30 ft. before you reach a traffic light at Dogtrot Rd.” Plaintiff recalled he stopped and talked to an officer in the parking lot of the elementary school immediately after the incident and the officer informed him he knew about the damage-causing pothole. Plaintiff related he subsequently telephone defendant, Department of Transportation (“DOT”), to report the pothole and was told DOT personnel had taken an earlier report regarding this defect. Plaintiff submitted photographs depicting the damage-causing pothole which were taken on the morning on March 5, 2008 before the roadway defect was patched. The photographs depict a

substantial roadway defect.

{¶ 2} 2) Plaintiff asserted the damage to his vehicle was proximately caused by negligence on the part of defendant in failing to maintain the roadway free of hazardous conditions. Plaintiff filed this complaint seeking to recover \$1,103.73, the cost of automotive repair. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff's March 5, 2008 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff's car struck, which DOT located at approximately milemarker 3.61 on State Route 264 in Hamilton County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to March 5, 2008. Defendant suggested "it is likely the pothole existed for only a short time before the incident." Defendant stated the DOT "Hamilton County Manager inspects all state roadways within the county at least two times a month." Apparently, no potholes were discovered at milemarker 3.61 on State Route 264 the last time that section of roadway was inspected prior to March 5, 2008. Defendant's maintenance records show pothole patching was performed in the vicinity of plaintiff's incident on February 8, 2008. Defendant asserted plaintiff did not provide any evidence to prove his negligent maintenance claim.

#### CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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, 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 defendant had actual notice of the damage-causing pothole.

{¶ 6} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the pothole. 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. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287, 587 N.E. 2d 891.

{¶ 7} Plaintiff, in the instant claim, has not produced sufficient 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. Plaintiff has failed to show the proximate cause of his damage was connected to any conduct under the control of defendant, or that defendant was negligent in maintaining the roadway area. *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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Bryan Black  
3564 Rickshire Drive  
Cincinnati, Ohio 45248

James G. Beasley, Director  
Department of Transportation  
1980 West Broad Street  
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RDK/laa  
10/15  
Filed 10/28/08  
Sent to S.C. reporter 1/23/09