

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

JOSH HILL

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-02731-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 4, 2009, at approximately 8:50 p.m., plaintiff, Josh Hill, was traveling south on Interstate 75 “through Cincinnati, Ohio” when his 1998 Lexus GS 400, struck a pothole “just after exit 10” causing substantial damage to the vehicle.

{¶ 2} 2) Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of hazards such as potholes. Plaintiff filed this complaint seeking to recover \$801.89, his insurance coverage deductible for automotive repairs, plus car rental expenses incurred resulting from the February 4, 2009 incident. 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 February 4, 2009 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff’s car struck, which DOT located at approximately milemarker 10.89 on Interstate 75 in Hamilton County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to February 4, 2009. 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 10.89 on Interstate 75 the last time that section of roadway was inspected prior to February 4, 2009. Defendant asserted plaintiff failed to produce evidence to establish the roadway was negligently maintained.

{¶ 4} 4) Plaintiff filed a response pointing out defendant did not make any attempt to repair the pothole his vehicle struck. Plaintiff submitted photographs of the particular section of Interstate 75 where his damage incident occurred. Plaintiff related the photograph was taken on May 7, 2009 and it depicts an area of roadway yards in front of the “Cinci Gardens Hamilton County Fairgrounds exit 9” where several potholes have been patched and the repair patches are showing areas of deterioration. Plaintiff stated “in the 3 months since the accident there has been no attempt to fix the pothole in question.” Plaintiff did not submit any evidence to establish the length of time the damage-causing pothole was present on the roadway prior to 8:50 p.m. on February 4, 2009.

CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to maintain the 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.

{¶ 6} 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, 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.

{¶ 7} 3) There is no evidence defendant had actual notice of the damage-causing pothole.

{¶ 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 (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458.

{¶ 9} 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. 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.

{¶ 10} 6) Plaintiff has failed to show that 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.

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

JOSH HILL

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-02731-AD

Deputy Clerk Daniel R. Borchert

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Josh Hill
783 Elizabeth Drive
Florence, Kentucky 41042

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
5/14
Filed 5/26/09
Sent to S.C. reporter 9/29/09