

# 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  
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SHARON L. SVENSSON

Case No. 2007-02866-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

DEPARTMENT OF  
TRANSPORTATION

Defendant

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## CONCLUSIONS OF LAW

{¶1} 1) On February 20, 2007, between 8:00 p.m. and 9:00 p.m., plaintiff, Sharon L. Svensson, was traveling east on State Route 125 in Clermont County when her van struck two potholes in the roadway causing tire and wheel damage to the vehicle. Plaintiff related that the damage-causing potholes were located approximately 1/4 mile apart on State Route 125.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$476.42, the total claimed cost of replacement parts and automotive repair resulting from the February 20, 2007, property damage event. Plaintiff implied that the damage to her van 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 contention that no DOT personnel had any knowledge of the potholes on the roadway prior to plaintiff's property damage occurrence. Defendant located the damage-causing potholes, "approximately at milepost 1.96 on SR 125 in Clermont County." Defendant submitted documents showing that DOT employees conducted pothole patching operations on State Route 125 from mileposts 1.00 to 7.00. The pothole repairs in this area were done on February 20, 2007. Presumably no employee associated with the DOT repair crew noticed any potholes at

Case No. 2007-02866-AD	- 2 -	MEMORANDUM DECISION
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milepost 1.96 during these patching operations. Defendant asserted that plaintiff failed to produce any evidence showing how long the potholes existed prior to the incident forming the basis of this claim.

{¶14} 4) Defendant denied receiving any calls or complaints regarding the particular pothole before plaintiff's incident. Defendant explained that DOT employees conduct roadway inspections, "at least two times a month." Apparently no potholes were discovered during previous roadway inspections. Defendant suggested that the pothole likely, "existed for only a short time before the incident," forming the basis of this claim. Defendant denied that DOT employees were negligent in regard to roadway maintenance.

{¶15} 5) Plaintiff did not submit any evidence to establish the length of time the defects were on the roadway prior to her property damage incident.

#### CONCLUSIONS OF LAW

{¶16} 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.

{¶17} 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.

{¶18} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the pothole. Additionally, the trier of fact is precluded from making an inference of constructive notice, unless

Case No. 2007-02866-AD	- 3 -	MEMORANDUM DECISION
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evidence is presented in respect to the time that the pothole appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication that defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer that 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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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MILES C. DURFEY  
Clerk

Entry cc:

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RDK/laa  
6/26  
Filed 8/10/07  
Sent to S.C. reporter 10/2/07