[Cite as *Dunbar v. Ohio Dept. of Transp.*, 2025-Ohio-1056.]

IN THE COURT OF CLAIMS OF OHIO

RYAN C. DUNBAR Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2023-00313JD Magistrate Adam Z. Morris DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence on the part of Defendant, Ohio Department of Transportation (ODOT), related to ponding water on Interstate 270 (I-270), which caused his single motor vehicle collision with the median wall on October 24, 2021. The case proceeded to a bifurcated trial on liability before the undersigned Magistrate. For the following reasons, the Magistrate recommends judgment be entered in favor of Defendant.

Background

{¶2} At the start of trial, before commencing Plaintiff's case-in-chief, and upon the record, the Magistrate DENIED Plaintiff's Motions in Limine, which included a Motion to Admit Expert Witness and a Motion to Include Hearsay Evidence. Accordingly, neither Plaintiff nor Defendant were entitled to present expert testimony, including Plaintiff who moved to have himself named an expert, and Plaintiff's Exhibits 12, 13, 20, and 21 were excluded from evidence. The Magistrate, however, deferred ruling on any other evidentiary issues within Plaintiff's Motions in Limine due to the variability of admissibility and instead opted to handle any such evidentiary issues during trial.

{¶3} Plaintiff presented testimony on his own behalf as a sworn witness under oath. Plaintiff did not present any other witness testimony, but did move during his direct testimony for the admittance of exhibits into evidence. The Magistrate admitted Plaintiff's Exhibits 1 (to the extent not excluded by hearsay in Plaintiff's Exhibit 2), 8, 10 (video), 11,

14, 18, 23, 25 (Sheetz receipt), and 30 into evidence. Upon sustained objection, the Magistrate excluded Plaintiff's Exhibits 2, 3, 10 (audio voice over), 32, 38, and 41 from being admitted into evidence.

{¶4} Upon the close of Plaintiff's case-in-chief, Defendant moved for dismissal pursuant to Civ.R. 41(B)(2), or in the alternative, a directed verdict pursuant Civ.R. 50(A). The Magistrate took Defendant's Motion under advisement and deferred ruling on the Motion until the close of all evidence. *See* Civ.R. 41(B)(2) ("The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.").

{¶5} Trial proceeded to Defendant's case-in-chief.

{¶6} Defendant rested its case-in-chief without calling a witness or moving exhibits into evidence.

{¶7} Upon the conclusion of all evidence, the Magistrate issued a simultaneous briefing schedule for written closing arguments in lieu of oral closing arguments as well as Defendant's Motion for Dismissal, which have each been fully briefed. (*See* December 20, 2024 Order of the Magistrate). While the Magistrate finds that Civ.R. 41(B)(2) is the proper standard for a Motion for Involuntary Dismissal in this case, the Magistrate hereby DENIES Defendant's Motion for Involuntary Dismissal in accordance with the rule, and instead renders judgment on the merits.

{¶8} Upon review, based on the evidence presented, the undersigned Magistrate issues the following findings of fact and conclusions of law.

Findings of Fact

{¶9} On October 24, 2021, Plaintiff was operating a motor vehicle, which he had rented from Budget Rental, traveling eastbound on I-270 on the north side of Columbus, Franklin County, Ohio. On that day, it had been raining and continued to rain for the duration of Plaintiff's trip from the Sheetz gas station at 4279 Cemetery Road, Hilliard, Ohio 43026, to the location of his single motor vehicle collision on eastbound I-270, west of milepost 23. I-270 is a public road maintained by Defendant.

{¶10} Plaintiff categorized the rain that day as moderate rain. Plaintiff had stopped at the Sheetz in Hilliard to purchase drinks, including a coffee. Plaintiff then left the Sheetz

and proceeded eastbound on I-270. Plaintiff encountered increased traffic congestion in the right lanes, which resulted in him moving into the left lane closest to the median. No specific explanation for the traffic congestion was known, but it allowed Plaintiff to enter an otherwise open left lane.

{¶11} After entering the left lane, traveling close to the posted speed limit, Plaintiff encountered ponding water at a depression in the roadway, which was collecting towards a drainage system on the left-hand shoulder near the median wall and into the left lane of travel. Upon this encounter, one or more of the tires on the motor vehicle Plaintiff was operating contacted the ponding water in the left lane. Despite retaining some ability to brake, Plaintiff lost control of the motor vehicle and ultimately collided with the median wall and came to a rest on the left-hand shoulder of eastbound I-270.

{¶12} Plaintiff did not see any advance signage or other warning for ponding water prior to his collision. It was still daylight at the time of the collision. Plaintiff was not distracted or tired at the time of the collision. Plaintiff did not take any evasive maneuvers prior to encountering the ponding water to avoid the collision.

{¶13} Prior to his collision, however, Plaintiff viewed police lights for another collision in the same area, but in the westbound I-270 lanes. Moreover, the same day, after Plaintiff's collision, another collision occurred in the same area of the eastbound I-270 lanes. Plaintiff also viewed a similar collision in the same area of the eastbound I-270 lanes during a rainy day in July 2024.

{¶14} In September 2021, Defendant received a report of ponding water in the same area of I-270 as Plaintiff's collision and responded the same day. Defendant investigated the issue with "an in-pipe camera inspection and cleaning once the water had subsided." (Plaintiff's Trial Exhibit 14, Interrogatory No. 17). Defendant did not receive any other reports of additional problems at that location until Plaintiff's collision. (Plaintiff's Trial Exhibit 14, Interrogatory No. 17). "Issues on the roadway are communicated to [Defendant] through a dispatch service as well as shared radio circuits with law enforcement and our Traffic Management Center." (Plaintiff's Trial Exhibit 14, Interrogatory No. 17). "[Defendant] does not characterize incidents, but rather utilizes the information generated by law enforcement agencies." (Plaintiff's Trial Exhibit 14, Interrogatory No. 10). Defendant has camera coverage in the same area of I-270 as

Plaintiff's collision, but "[v]ideos are routinely deleted after 72 hours." (Plaintiff's Trial Exhibit 14, Interrogatory No. 17).

{¶15} Plaintiff was not cited by the Ohio State Highway Patrol for the collision. Plaintiff was able to self-extricate himself from the motor vehicle, but required medical attention. The motor vehicle Plaintiff was operating, which was owned by Budget rental, sustained damage. Plaintiff sustained injuries and was transported to the hospital from the scene of the collision by ambulance.

Conclusions of Law

{¶16} To prevail on a negligence claim, a plaintiff must prove by a preponderance of the evidence that defendant owed plaintiff a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused plaintiff's injuries. *Armstrong v. Best Buy Co., Inc*., 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Prods., Inc*., 15 Ohio St.3d 75, 77 (1984).

{¶17} Defendant has a duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Dept. of Transp.*, 49 Ohio App.2d 335, 339 (10th Dist. 1976). However, Defendant is not an absolute insurer of the safety of its highways. *Kniskern v. Twp. of Somerford*, 112 Ohio App.3d 189, 195 (10th Dist. 1996); *Rhodus v. Ohio Dept. of Transp.*, 67 Ohio App.3d 723, 730 (10th Dist. 1990). Generally, Defendant is only liable for roadway conditions that it has notice of but fails to correct. *Miller v. Ohio Dept. of Transp.*, 2014-Ohio-3738, ¶ 42 (10th Dist.).

{¶18} To prove a breach of duty by Defendant to maintain the highways, Plaintiff must establish, by a preponderance of the evidence, that either Defendant had actual or constructive notice of the defect and failed to respond in a reasonable time or responded in a negligent manner, or Defendant, in a general sense, maintains its highways negligently. *Swarts v. Ohio Dept. of Transp.*, 2021-Ohio-3740, ¶ 10 (Ct. of Cl.), citing *Denis v. Dept. of Transp.*, Ct. of Cl. No. 75-0287-AD (1976). "Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice." *Hughes v. Ohio Dept. of Rehab. & Corr.*, 2010-Ohio-4736, ¶ 14 (10th Dist.); *see*

also Gelarden v. Ohio Dept. of Transp., Dist. 4, 2007-Ohio-3047, ¶ 8 (Ct. of Cl.), citing *Guiher v. Dept. of Transp.*, Ct. of Cl. No. 78-0126-AD (1978) (For there to be constructive notice, plaintiff must prove that "sufficient time has elapsed after the dangerous condition appears, so that under the circumstances defendant should have acquired knowledge of its existence.").

{¶19} Upon review of the evidence, the Magistrate concludes that Plaintiff has not established by a preponderance of the evidence that Defendant negligently designed or constructed the roadway, Defendant had notice, actual or constructive, of the ponding water, or Defendant had willful blindness to be liable for Plaintiff's collision.

{¶20} Initially, the Magistrate cannot conclude that Defendant negligently designed or constructed I-270, or its drainage systems, because both parties were precluded from presenting expert testimony necessary for the Magistrate to form such a conclusion outside of the scope of a lay witness. *See, e.g.*, *Kraft v. OMCO Building, LLC*, 2019-Ohio-621, ¶ 33 ("To show a design defect, [plaintiff] was required to present expert testimony."). As such, the Magistrate shall turn his analysis to notice and maintenance.

{¶21} Upon review of the evidence, the Magistrate concludes that Defendant did not have actual notice of the roadway defect, the ponding water, at the time and location of Plaintiff's collision because there is no evidence that Defendant received any direct reports of ponding water posing a hazard or otherwise. Moreover, even if Defendant had access to the same dispatch and radio channels as law enforcement, or maintained camera coverage in the area, Plaintiff presented no other independent evidence that demonstrates Defendant received actual notice of the ponding water in the area of Plaintiff's collision through use of those channels or cameras, or by the police presence at the westbound I-270 collision that occurred in the same area prior to his collision. *See Danko v. Ohio Dept. of Transp.*, 1993 Ohio App. LEXIS 636, *9 (10th Dist. Feb. 4, 1993), citing *McClellan v. Ohio Dept. of Transp.*, 34 Ohio App.3d 247, paragraph two of the syllabus (10th Dist. 1986) (The Tenth District Court of Appeals has held that "notice of a highway defect to the state highway patrol does not constitute actual notice to ODOT.").

{¶22} Upon review of the evidence, the Magistrate concludes that Defendant did not have constructive notice of the roadway defect, the ponding water, at the time and location of Plaintiff's collision, or otherwise negligently maintain the roadway. Plaintiff

failed to establish that the elapsed time between the prior collision in the westbound I-270 lanes and his collision in the eastbound I-270 lanes provided sufficient time for Defendant to learn of the ponding water for the Magistrate to conclude the Defendant had constructive notice of the ponding water. Moreover, Plaintiff's view of other subsequent collisions in the same area as his collision, on the same date as his collision and in July 2024, have no bearing on Defendant's alleged liability for Plaintiff's collision. Specifically, testimony of a collision roughly three years after Plaintiff's collision is not probative evidence of the location of the roadway defect, or Defendant's practices and procedures related to roadway defects, at the time of Plaintiff's collision.

{¶23} With respect to maintenance, the evidence establishes that Defendant previously investigated ponding water in the same area as Plaintiff's collision in September 2021. Defendant responded to the ponding water with in-pipe camera inspection and cleaning. Thereafter, Defendant did not receive any further reports of issues in the area after its inspection and cleaning. Moreover, Plaintiff presented no evidence from between the September 2021 inspection and cleaning and Plaintiff's October 24, 2021 collision to otherwise demonstrate negligent maintenance occurred. Because the previous inspection and cleaning occurred over a month prior to Plaintiff's collision, constructive notice of an ongoing roadway defect, or negligence maintenance thereof, cannot be presumed.[1] Furthermore, there is no other evidence regarding the September 2021 investigation upon which the Magistrate could impute to Defendant constructive notice of the ponding water present at the time and location of Plaintiff's collision

{¶24} Accordingly, the Magistrate concludes that Defendant did not have actual or constructive notice of the ponding water that caused Plaintiff's collision, or otherwise negligently maintain the roadway, prior to Plaintiff's collision.

[1] The Court's precedent involving other roadway defects, and the repair practices and procedures thereof, is instructive. For instance, a pothole patch that fails in less than ten days is prima facie evidence of negligent maintenance. *See Schrock v. Ohio Dept. of Transp*., 2005-Ohio-2479, ¶ 14 (Ct. of Cl.). But a patch which may or may not have failed over a longer time frame does not constitute, in and of itself, conclusive evidence of negligent maintenance. See *Edwards v. Ohio Dept. of Transp.*, 2006-Ohio-7173, ¶ 15 (Ct. of Cl.).

{¶25} Regarding Plaintiff's discussion of willful blindness, it is unclear whether Plaintiff intended to develop this argument as a separate cause of action or alternative theory for notice. (*Compare* Plaintiff's Closing Arguments, p. 2 ("Unfortunately, these acts of willful blindness prevented the Defendant from fulfilling its duties such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair defects.") *with* Plaintiff's Closing Arguments, p. 10 ("Despite the defendants concerted efforts to avoid actual or constructive notice through acts of willful blindness.")). However, willful blindness is simply an independent basis upon which a court can find a defendant negligent. *White v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-5063, ¶ 44.

{¶26} In Ohio, "[a]t least one court has applied ['willful blindness'] in a civil context, and defined the term as the 'conscious tort of deliberate ignorance that's meant to be imposed when a defendant refuses to take basic investigatory steps.'"[2] *Id.*, citing *Childs v. Charske*, 2004-Ohio-7331, ¶ 25 (Montgomery C.P.).

{¶27} Upon review of the evidence, the Magistrate concludes that Plaintiff has failed to prove willful blindness by a preponderance of the evidence. As discussed above, the evidence presented actually supports the proposition that Defendant lacked willful blindness because Defendant deliberately inspected and cleaned in the area of Plaintiff's collision in response to a reported ponding water issue in September 2021, and no other evidence presented suggests that Defendant took steps to maintain plausible deniability about an ongoing ponding water issue. Importantly, Defendant did not receive any further complaints of issues in that area after its September 2021 investigation that it refused to address. Moreover, Plaintiff's presentation, as a lay witness in this case, of proactive steps he argues Defendant should have taken does not persuade the Magistrate otherwise that Defendant was willfully blind, or failed to take requisite investigatory steps, without further evidence of their required duty to take such steps. (*See* Plaintiff's Closing

[2] "Willful blindness has been said to occur when a defendant suspects a fact, realizes the probability of it, but nevertheless refrains from obtaining final confirmation because they want to be able to say something else. In another formulation it is said that "knowledge" exists where a person believes that it is probable that something is a fact, but they deliberately shut their eyes or avoid making reasonable inquiry with the conscious purpose of avoiding confirmation of the truth." *Am. Hotel Group, LLC v. Wyandotte Plaza*, LLC, 2016 Ohio Misc. LEXIS 30, *27 (Franklin C.P. 2016).

Arguments, p. 2-5 (“Willful Blindness”); 8-9 (“Breach of Duties”)). Accordingly, Plaintiff has not proven willful blindness by a preponderance of the evidence.

{¶28} Based upon the foregoing, the Magistrate concludes that Plaintiff failed to satisfy the elements of his claims for negligence by a preponderance of the evidence. Accordingly, the Magistrate recommends judgment be entered in favor of Defendant.

{¶29} *A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

ADAM Z. MORRIS
Magistrate

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