**[Cite as *Jackson v. Ohio Dept. of Transp.*, 2019-Ohio-5483.]**

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| LEONARD H. JACKSON<br><br>Plaintiff<br><br>v.<br><br>OHIO DEPARTMENT OF TRANSPORTATION<br><br>Defendant | Case No. 2019-00044AD<br><br>Deputy Clerk Daniel R. Borchert<br><br>MEMORANDUM DECISION |

**{¶1}** Leonard Jackson ("plaintiff") filed this claim against the Ohio Department of Transportation ("ODOT"), to recover damages which occurred on March 13, 2018, when his vehicle struck a pothole while traveling on Interstate Route ("IR") 90 in Cuyahoga County, Ohio. Plaintiff contends that he was entering IR 90 from East 222nd Street (Lakeland Avenue), when his vehicle encountered a pothole in the roadway. Plaintiff states the pothole caused damage to the front left tire. This road is a public road maintained by ODOT. Plaintiff requests damages in the amount of $151.51. Plaintiff maintains an insurance deductible of $1,000.00. Plaintiff was not required to submit the $25.00 filing fee.

**{¶2}** In order to recover on a claim for roadway damages against ODOT, Ohio law requires that a motorist/plaintiff prove *all* of the following:

That the plaintiff's motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by ODOT.

That ODOT knew or should have known about the dangerous road condition.

That ODOT, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

**{¶3}** In this claim, the court finds that the plaintiff did prove that his vehicle received damages and that those damages occurred as a result of the plaintiff's vehicle coming into contact with a dangerous condition on a road maintained by ODOT.

**{¶4}** In order for a plaintiff to recover in any suit involving injury proximately caused by roadway conditions including potholes, plaintiff must prove that either: (1) defendant had actual or constructive notice of the pothole and failed to respond in a reasonable time or responded in a negligent manner, or (2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation*, 75-0287-AD (1976). Plaintiff has not provided any evidence to prove that ODOT had actual notice of the pothole. Therefore, to recover plaintiff must offer proof of defendant's constructive notice of the dangerous condition as evidence to establish negligent maintenance.

**{¶5}** Constructive notice is defined as "(n)otice arising from the presumption of law from the existence of facts and circumstances that a party has a duty to take notice of...Notice presumed by law to have been acquired by a person and thus imputed to that person." (Black's Law Dictionary at 1090 8th Ed. 2004.) In order for there to be a finding of constructive notice, plaintiff must prove, by a preponderance of the evidence, that sufficient time has elapsed after the dangerous condition appears, so that under the circumstances defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation,* 78-0126-AD (1978); *Gelarden v. Ohio Dept. of Transp.,* Dist. 4, Ct. of Cl. No. 2007-02521-AD, 2007-Ohio-3047.

**{¶6}** In the Investigation Report, ODOT stated that the location of the incident was on IR 90 in Cuyahoga County, between county mile markers 27.00 and 28.37 and between state mile markers 182.9 and 184. This section of the roadway has an average daily traffic count of 5,155 vehicles. Despite this volume of traffic, ODOT had received zero (0) complaints of potholes on the roadway in the six months prior to plaintiff's incident. Thus, the court is unable to find that ODOT knew about the pothole. Within the past six months, ODOT had also conducted nine hundred fifty-seven (957) maintenance operations on IR 90 in Cuyahoga County. If a pothole had existed for any

appreciable length of time on this section of the roadway, it is probable that it would have been discovered by ODOT's work crews.

**{¶7}** However, a review of the Maintenance History by Route provided by ODOT with the investigation report revealed pavement patching operations occurred at the damage-causing location on March 7, 2018, six (6) days prior to plaintiff's incident. According to the Maintenance History by Route, ODOT conducted pavement patching operations on IR 90, beginning at state mile marker 155.81 and ending at state mile marker 186.01.

**{¶8}** A patch that deteriorates in less than ten days is prima facie evidence of negligent maintenance. See *Matala v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-01270-AD, 2003-Ohio-2618; *Schrock v. Ohio Dept. of Transp*., Ct. of Cl. No. 2005-02460-AD, 2005-Ohio-2479.

**{¶9}** Accordingly, based upon evidence submitted by defendant, the pothole in question had been patched by defendant six (6) days prior to plaintiff's damage causing incident. This is dispositive of negligent maintenance on the part of the defendant.

**{¶10}** Plaintiff did not respond to defendant's Investigation Report.

**{¶11}** A review of the repair order plaintiff submitted from Wilson Auto Clinic dated March 13, 2018, revealed the repairs to plaintiff's vehicle were calculated at $51.51.

**{¶12}** Therefore, judgment is rendered in favor of plaintiff in the amount of $51.51.

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| LEONARD H. JACKSON | Case No. 2019-00044AD |
| Plaintiff | Deputy Clerk Daniel R. Borchert |
| v. | ENTRY OF ADMINISTRATIVE |

**IN THE COURT OF CLAIMS OF OHIO**

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| OHIO DEPARTMENT OF TRANSPORTATION<br><br>Defendant | 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 the plaintiff in the amount of $51.51. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 6/13/19
Sent to S.C. Reporter 2/13/20