

[Cite as *Weaver v. Ohio Dept. of Transp.*, 2002-Ohio-4606.]

IN THE COURT OF CLAIMS OF OHIO

T. JAMAHL WEAVER	:	
2741 Erlene Drive #11	:	
Cincinnati, Ohio 45238	:	Case No. 2002-02736-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPT. OF TRANSPORTATION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant:	Gordon Proctor, Director
	Department of Transportation
	1980 West Broad Street
	Columbus, Ohio 43223
	: : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On or about February 6, 2002, plaintiff, T. Jamahl Weaver, was traveling south on Interstate 75 near milepost 12 in Hamilton County, when his automobile struck a pothole located in the traveled portion of the roadway. The pothole caused tire and rim damage to plaintiff's vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$193.53, the cost for automotive repair. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's incident.

{¶4} 4) On July 1, 2002, plaintiff submitted a response to defendant's investigation report. Plaintiff has not presented any evidence to indicate the length of time the pothole was on the roadway prior to his property-damage occurrence.

#### CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶7} 3) In order to recover on a claim of this type, plaintiff must prove 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* (1976), 75-0287-AD.

{¶8} 4) There is no evidence defendant had actual notice of the pothole.

{¶9} 5) 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 pothole developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the pothole appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing pothole.

{¶12} 8) Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶13} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶14} IT IS ORDERED THAT:

{¶15} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶16} 2) The court shall absorb the court costs of this case in excess of the filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk

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