

[Cite as *Sheppard v. Ohio Dept. of Transp.*, 2002-Ohio-6537.]

IN THE COURT OF CLAIMS OF OHIO

| | | |
|--------------------------|---|------------------------|
| QIANA SHEPPARD | : | |
| 6308 Corbly Road #6 | : | |
| Cincinnati, Ohio 45230 | : | Case No. 2002-07673-AD |
| Plaintiff | : | MEMORANDUM DECISION |
| v. | : | |
| DEPT. OF TRANSPORTATION, | : | |
| HIGHWAY OPERATIONS | : | |
| Defendant | : | |

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

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

FINDINGS OF FACT

{¶1} 1) On Saturday, May 18, 2002, plaintiff, Qiana Sheppard, was traveling on the Norwood lateral ramp onto Interstate Route 75 between mileposts 6.97 and 7.5 in Hamilton County when her automobile struck a pothole causing tire and rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,060.00, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

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

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show three pothole patching operations were needed in the general vicinity of plaintiff's incident during the three-month period preceding plaintiff's property damage event. The last pothole repair defendant made in the area prior to plaintiff's incident was on May 9, 2002.

{¶6} 6) Plaintiff submitted photographic evidence depicting the pothole her automobile struck. This photograph shows a roadway defect which had apparently undergone repairs with the repaired area deteriorating to such an extent that a new defect was created.

CONCLUSIONS OF LAW

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

{¶8} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect 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;

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

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

{¶11} 5) Size of the defect is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287.

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

{¶13} 7) No evidence has shown defendant had constructive notice of the pothole.

{¶14} 8) However, sufficient evidence has been presented to establish defendant negligently maintained the roadway. Plaintiff's photograph showing a pothole patch which had failed is evidence of negligent maintenance. Defendant's evidence established potholes' were previously repaired in the area of plaintiff's incident on March 5, 2002, March 19, 2002, and May 9, 2002. Pothole patch deterioration in a relatively short period of time constitutes negligent maintenance and resulting liability. Defendant is liable to plaintiff for the damage claimed, plus filing fees, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶18} 2) Defendant (Department of Transportation) pay plaintiff (Qiana Sheppard) \$1,085.00 and such interest as is allowed by law;

{¶19} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk