

[Cite as *Matala v. Ohio Dept. of Transp.*, 2003-Ohio-2618.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL PAUL MATALA :
Plaintiff :
v. : CASE NO. 2003-01270-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM
Defendant : DECISION

.....

FINDINGS OF FACT

{¶1} 1) On December 16, 2002, plaintiff, Michael Paul Matala, was traveling on State Route 127 at milepost 8.5 in Butler County, when his automobile struck a pothole 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 \$583.62, for replacement parts and related expenses. 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 damage-causing pothole. Both defendant and plaintiff submitted evidence showing the pothole at milepost 8.5 on State Route 127 was a pavement deterioration in front of a drainage structure. Defendant filed evidence showing the drainage structure was repaired on October 11, 2002. Additionally, defendant offered evidence establishing a pothole was repaired at milepost 8.5 on State Route 127 on December 10, 2002. The trier of fact infers this pothole repaired on December 10, 2002, is the same pothole plaintiff struck on December 16, 2002. The patching material had failed less than one week after repairs

were conducted.

{¶4} 4) On March 28, 2003, plaintiff filed a response to defendant's investigative report. However, plaintiff has not presented any evidence to indicate the length of time the pothole was on the roadway prior to his property-damage occurrence. Plaintiff has contended defendant is liable for his damages pursuant to duties imposed by R.C. 2744.02(B)(3).¹

{¶5} 5) On April 4, 2003, defendant filed a reply to plaintiff's response. Defendant contends its prior pothole patching operations show it has adequately maintained the roadway. Defendant also contends plaintiff's photographic evidence should be disregarded since it cannot be established where and when these pictures were taken.

CONCLUSIONS OF LAW

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

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

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

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

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

{¶11} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (pothole) appears, so that under

¹ R.C. 2744.02 applies to political subdivision liability and has no application in this court to defendant, Ohio Department of Transportation.

the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

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

{¶13} 8) However, plaintiff has proven defendant negligently maintained the roadway by inadequately patching a roadway defect whereby the patch failed in less than one week. Consequently, defendant is liable to plaintiff for all damages claimed based on the negligent maintenance rationale offered in *Denis*, supra.

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

{¶15} IT IS ORDERED THAT:

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

{¶17} 2) Defendant (Department of Transportation) pay plaintiff (Michael Paul Matala) \$608.62 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Michael Paul Matala
736 GingerRidge Drive
Trenton, Ohio 45067

Plaintiff, Pro se

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

For Defendant