

Plaintiff described the defect in the roadway as a large, deep, rectangular-shaped hole covering nearly half of the right lane.

{¶3} On cross-examination, plaintiff stated that she had driven this route six nights a week on her way to work. Plaintiff testified that she was unsure whether the car had struck the rock or the large hole. Plaintiff further acknowledged that she had seen cracking of the pavement in this area during the week prior to the accident. However, she denied reporting her observations to ODOT.

{¶4} Michael Lovelace testified that he was employed by defendant as a transportation manager and that as such, he was responsible for all highway maintenance in the area where plaintiff's incident occurred. He stated that he was called to the scene to repair the highway defect and that when he arrived he could see that a large section of concrete had broken away, leaving a hole which he described as relatively deep and significant in size. Lovelace related that cracking of the nature he witnessed at the site takes place over prolonged periods, that is, weeks to months; and that the cracking results in fragmentation of the stone which only worsens over time. He estimated that the defect was filled with one-tenth of a ton of temporary patching material. According to Lovelace, a second repair was performed at a later date, which involved coring-out an area larger than the temporary patch, fixing all the cracks, and then pouring new concrete.

{¶5} Lovelace maintained that some, but not all, cracks on the concrete portion of the roadway are a sign of distress and that the only way to ascertain which cracks are indicative of impending roadway deterioration is to perform sounding tests. Lovelace described this as a process whereby ODOT workers drag hammers or chains across the cracks to ascertain if the area beneath the surface sounds hollow. However, Lovelace admitted that ODOT did not routinely engage in sounding activities and he reasoned that this was because ODOT did not have adequate resources to sound all known cracks. Lovelace acknowledged that numerous ODOT crews traveled over the section of I-675 in question in order to pick up litter and to perform mowing and maintenance operations throughout the week prior to plaintiff's accident. In addition, Lovelace admitted that it was his duty to drive over this stretch of I-675 at least once per week as part of his regular job.

{¶6} Defendant presented testimony from the Greene County Transportation Administrator, Terry Gill, who confirmed that ODOT work crews travel the highways daily while performing maintenance activities and that they are instructed to assess the roadways for evidence of any hazards or defects and to effectuate repairs as needed. Gill testified that it was his custom and practice to drive over the highways that are under his supervision at least once every two weeks. Although Gill insisted that there is no way to determine when the hole in question had formed, he conceded that the presence of checked or alligator cracking would indicate that there was water under the surface of the roadway. He explained that as cracks develop, water seeps in, is trapped below the surface, and turns to steam as the daily temperatures rise; then as the pressure builds, the stress eventually can cause the concrete to heave or buckle.

{¶7} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Although the state is not an insurer of the safety of its highways, the state has a duty to maintain its highways in a reasonably safe condition. *Knickel v. Dept. of Transp.* (1976), 49 Ohio App.2d 335, 339. The state cannot be charged with neglect unless it is demonstrated that the state had knowledge, either constructive or actual, of the roadway defect complained of, and within sufficient time to remedy it. *Danko v. Dept. of Transp.* (July 29, 1992), Court of Claims No. 90-05881, affirmed Franklin App. No. 92AP-1183.

{¶8} In *McClellan v. Ohio Dept. of Transp.* (1986), 34 Ohio App.3d 247, the Tenth District Court of Appeals held that “in order for there to be constructive notice of a nuisance or defect in the highway, it must have existed for such length of time as to impute knowledge or notice.” Upon review of all the evidence and testimony presented at trial, the court finds that defendant had constructive notice of the defect and failed to undertake appropriate remedial action to remedy the hazard.

{¶9} Based on the testimony presented, the court is convinced that the concrete showed some obvious signs of damage in the weeks prior to its ultimate deterioration and fragmentation. The court finds the testimony of plaintiff regarding the signs of cracking that she had noticed in the week prior to her incident to be particularly persuasive inasmuch as she traversed the same route nearly every day to work. Moreover, the court is convinced that the cracks would have been as readily apparent, if not more so, to defendant's employees who are charged with the duty of looking for defects and who traveled those same roadways numerous times day after day, week after week.

{¶10} Defendant's experienced highway maintenance personnel testified that concrete is typically poured around steel "rebar"; that cracks appear weeks to months before the concrete deteriorates; and that when concrete does finally fragment, it breaks loose in large chunks.

{¶11} The photographs submitted at trial depict an area of deterioration that appears to extend several feet across the lane of travel. The demonstrative evidence clearly shows markedly crumbled sections of concrete slab interspersed with numerous deep cracks and fissures. (Plaintiff's Exhibit 2.) The court is not persuaded that the crumbling roadway and the defects captured in the photographs of the scene occurred immediately prior to plaintiff's accident.

{¶12} Consequently, the court finds that, based on the number and severity of the cracks depicted in the photographs, defendant knew or should have known that the roadway had deteriorated to the extent that an unreasonable risk of harm existed. For the foregoing reasons, the court finds defendant was negligent and that defendant's negligence proximately caused damage to plaintiff. Accordingly, judgment shall be rendered in favor of plaintiff.

{¶13} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall

issue an entry in the near future scheduling a date for the trial on the issue of damages.

{¶14} On another matter, the court hereby DENIES as moot plaintiff's April 19, 2004, motion requesting that a decision be issued forthwith.

J. WARREN BETTIS
Judge

Entry cc:

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