

[Cite as *Gilmore v. Ohio Dept. of Transp.*, 2004-Ohio-4130.]

IN THE COURT OF CLAIMS OF OHIO

STACY GILMORE :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-05317-AD
 :
 OHIO DEPARTMENT OF : MEMORANDUM DECISION
 TRANSPORTATION :
 :
 Defendant :
 :
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FINDINGS OF FACT

{¶1} 1) On April 2, 2004, at approximately 8:30 p.m., plaintiff, Stacy Gilmore, was traveling south on US Route 250 about two miles south of Fitchville in Huron County, when his automobile struck a "huge" pothole in the traveled portion of the roadway causing rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$180.00, his total cost of automotive repair which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. The requisite material filing fee was paid on plaintiff's behalf.

{¶3} 3) Plaintiff submitted photographs depicting the particular pothole his car struck. Photographs showed the damage-causing pothole was massive.

{¶4} 4) Defendant denied liability based on the assertion DOT personnel had no knowledge of the particular pothole on US Route

250 prior to plaintiff's property damage occurrence. Defendant suggested the damage-causing pothole likely was formed only a short period of time before the April 2, 2004, incident. Defendant denied receiving any complaints or being notified in any way about the pothole in question. Defendant stated US Route 250, "was in good condition at the time and in the general vicinity of plaintiff's incident."

{¶5} 5) Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

{¶6} 6) Plaintiff disagreed with defendant's assertion that US Route 250 was in good condition. Plaintiff submitted several photographs depicting the general state of disrepair of the roadway. Despite responding¹ to defendant's statements, plaintiff did not introduce any evidence to indicate the length of time the damage-causing pothole existed prior to the April 2, 2004, property damage event.

CONCLUSIONS OF LAW

{¶7} 1) Defendant has the duty to keep 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 (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.*

¹ A response was filed on June 21, 2004.

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 (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶11} 5) Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297.

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

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

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

{¶15} 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 defendant.

Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Stacy Gilmore
479 SR 250 North
Greenwich, Ohio 44837

Plaintiff, Pro se

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

For Defendant

RDK/laa
6/24
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