

[Cite as *Feeley v. Ohio Dept. of Transp.*, 2005-Ohio-3535.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT A. FEELEY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04284-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
: : : : : : : : : : : : : : : :		

FINDINGS OF FACT

{¶ 1} 1) On February 8, 2005, at approximately 6:45 a.m., plaintiff, Robert A. Feeley, was traveling east on State Route 128 in the 800 block of Withamsville, Ohio (Clermont County), when his automobile struck a large pothole causing tire and rim damage to the vehicle. Plaintiff related the pothole his car hit had been recently repaired prior to his incident, but the repair patch had deteriorated creating a large defect in the traveled portion of the roadway.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$607.60, the cost of replacement parts and repair expenses, which plaintiff contends he incurred as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the allegation DOT did not have any notice of the pothole on State Route 125 prior to plaintiff's property damage occurrence. Defendant suggested the pothole defect was likely formed a short time before the February 8, 2005, incident.

{¶ 4} 4) Defendant explained the pothole plaintiff's vehicle struck had been patched by DOT personnel on January 31, 2005. Defendant acknowledged the repair patch deteriorated due to poor weather conditions at sometime between January 31, 2005 and February 8, 2005. Defendant presumed the patch deteriorated at some point "shortly preceding" plaintiff's property event since DOT did not receive any complaints regarding a pothole on State Route 125.

CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} 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. Department of Transportation* (1976), 75-0287-AD.

{¶ 7}) For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 8} 4) Although liability based on notice of the defects may present an unresolved issue in this claim, plaintiff has proven, by a preponderance of the evidence, that defendant did in a general sense, maintain the highway negligently. *Denis*, supra. The facts have established, on February 8, 2005, plaintiff's car struck a

pothole that had been patched on January 31, 2005. A pothole patch which deteriorates in less than ten days is prima facie evidence of negligent maintenance. See *Matala v. Department of Transportation*, 2003-01270-AD, 2003-Ohio-2618. Negligence in this action has been proven and defendant is liable for the damage claimed.

IN THE COURT OF CLAIMS OF OHIO

ROBERT A. FEELEY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04284-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
: : : : : : : : : : : : : : : :		

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 plaintiff in the amount of \$632.60, which includes the filing fee. Court costs are assessed against defendant. 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:

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For Defendant

RDK/laa
6/9
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