

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ALLISON L. ROMES

Plaintiff

v.

THE OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2008-01286-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) At approximately 7:00 p.m. on December 12, 2007, plaintiff, Allison L. Romes, was traveling on the entrance ramp from State Route 58 to State Route 2 in Lorain County, when her automobile hit a pothole causing tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff asserted the property damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway. Consequently, plaintiff filed this complaint seeking to recover \$408.31, the total cost of repairing the damage to her car. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular pothole prior to plaintiff’s property damage occurrence. Defendant denied receiving any prior calls or complaints regarding the pothole which DOT located at “approximate milemarker 7.40 on SR 2 in Lorain County.” Defendant asserted plaintiff did not produce sufficient evidence to establish the length of time the pothole at milemarker 7.40 on State Route 2 existed prior to 7:00 p.m. on December 12, 2007. Defendant suggested, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time

before plaintiff's incident."

{¶ 4} 4) Defendant contended plaintiff failed to prove DOT negligently maintained the roadway. Defendant argued plaintiff did not provide evidence to show her damage was attributable to any conduct on the part of DOT personnel. Defendant explained the DOT "Lorain County Manager conducts roadway inspections on all state roadways on a routine basis, at least one to two times a month." Apparently, no potholes were discovered at milemarker 7.40 on State Route 2 the last time that roadway section was inspected before December 12, 2007. Defendant's records show the pothole at milemarker 7.40 on State Route 2 was patched by DOT crews on December 7, 2007.

CONCLUSIONS OF LAW

{¶ 5} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶ 6} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. Defendant is only liable for roadway conditions of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. No evidence has shown defendant had actual notice of the damage-causing pothole.

{¶ 7} Therefore, to find liability plaintiff must prove DOT had constructive notice of the defect. 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. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the pothole.

{¶ 8} Ordinarily in a claim involving roadway potholes, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition 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. A pothole patch which deteriorates in less than ten days is prima facie evidence of negligent maintenance. *Matala v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-01270-AD, 2003-Ohio-2618; *Schrock v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-02460-AD, 2005-Ohio-2479. Evidence has shown plaintiff's vehicle was damaged by a pothole that had been patched on December 7, 2007 and the repair patch had failed by December 12, 2007.

{¶ 9} The fact that the pothole plaintiff's car struck deteriorated in a time frame of less than one week warrants application of the standard expressed in *Matala; Fisher v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2007-04869-AD, 2007-Ohio-5288. Negligence in this action has been proven and defendant is liable for the damage claimed, plus filing fee costs.



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ENTRY OF ADMINISTRATIVE DETERMINATION

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 \$433.31, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

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