

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

DARRELL BROUGHTON

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2009-02839-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 18, 2009, at approximately 11:30 p.m., plaintiff, Darrell Broughton, was traveling north in the right lane on Interstate 75 in Cincinnati near milemarker 15 when his 2008 Honda Accord struck a pothole causing tire and rim damage to the vehicle. Plaintiff located the pothole in the area of “G.E. in (Cincinnati, Ohio) going northbound on 75 at Exit 15 Sharonville, Oh.”

{¶ 2} 2) Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of hazards such as potholes. Plaintiff filed this complaint seeking to recover damages in the amount of \$788.66, the cost of replacement parts and related repair expenses he incurred resulting from the February 18, 2009 incident.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff’s February 18, 2009 property damage occurrence. Defendant denied receiving prior notice about the pothole plaintiff’s car struck, which DOT located at approximately

milemarker 15.39 on Interstate 75 in Hamilton County. Defendant asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to February 18, 2009. 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.” Defendant acknowledged receiving a complaint on February 18, 2008 about the particular damage-causing pothole. Defendant stated DOT “did not receive any complaints or otherwise have any notice of subject condition (pothole at milemarker 15.39) prior to Plaintiff Broughton’s incident.” Defendant submitted a copy of the complaint received about the pothole on Interstate 75. The complaint bearing a received date of February 18, 2009 carries a caption “Detailed Description.” Under this caption is written:

{¶ 4} “Received an e-mail from Court of Claims stating ‘I got a call from a gentleman yesterday for a pothole at northbound I-75 near GE or before the Sharon Road Exit.’ This is in the milepost 12.92 to 15.39 area of I-75. The Nightshift crew patched the rightlane from the 12.3 to the 15.9 on 2-20-09 there are still more holes in the other two lanes that need attention. They also addressed holes on the collector by GE. These holes were filled with the Dura patcher not coldmix.”

{¶ 5} The trier of fact finds this complaint was received during business hours on February 18, 2009.

{¶ 6} 4) Defendant asserted that plaintiff failed to produce evidence to show DOT negligently maintained the roadway. Defendant explained that the DOT Hamilton County Manager, “conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month.” Apparently no potholes were discovered at milepost 15.39 on Interstate 75 the last time this roadway was inspected prior to February 18, 2009. Defendant’s records show pothole patching operations were conducted in the vicinity of milepost 15.39 on Interstate 75 on January 6, 2009 and January 9, 2009. Defendant related that if the particular damage-causing pothole had been detected by DOT the particular defect “would have been promptly scheduled for repair.”

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} In order to recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the 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} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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.

{¶ 10} Evidence in the instant claim establishes defendant received actual notice of the particular damage-causing pothole multiple hours before plaintiff's incident. Based on the rationale of both *McClellan* and *Denis*, defendant is liable for all damages claimed. Evidence has shown DOT had actual notice of the damage-causing pothole and failed to respond in a reasonable time after receiving this notice. See *Miller v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-03547-AD, 2005-Ohio-5384. Defendant is liable to plaintiff for the damages claimed, \$788.66, plus the \$25.00 filing fee which may be awarded as costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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

DARRELL BROUGHTON

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2009-02839-AD

Deputy Clerk Daniel R. Borchert

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 \$813.66, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Darrell Broughton
7794 E. County Road 1000 North
Sunman, Indiana 47041

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
6/30
Filed 7/16/09
Sent to S.C. reporter 11/10/09