[Cite as *Howland v. Ohio Dept. of Transp.*, 2014-Ohio-5893.]

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

TERRY L. HOWLAND

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00064-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Terry Howland, filed this action against defendant, Ohio Department of Transportation ("ODOT"), contending that his Ford Rollback Tow Truck was damaged when he hit a pothole while traveling eastbound on Interstate I-70. Plaintiff stated: "I hit a chuck hole in right lane that pulled wheel out of my hand, then hit one more, too much traffic could not get over, hit 2 more, when I got home the driver's side was down – I tried driving next day the right front leaf spring was broke all the way through." Plaintiff noted the damage-causing incident occurred on January 14, 2014 at approximately 2:30 p.m. Plaintiff asserted that the damage to his vehicle was a proximate result of negligence on the part of ODOT in maintaining a hazardous condition on I-70. Plaintiff seeks damages in the amount of $891.25, the total amount to repair his vehicle. Plaintiff submitted the $25.00 filing fee with the complaint.

{¶2} Defendant filed an investigation report which related that plaintiff's incident occurred "between milemarker 3.0 and 3.5 on IR 70 in Preble County." This section of IR 70 has an average daily traffic count between 16,910 and 29,690 vehicles. Defendant asserted that plaintiff did not offer any evidence to substantiate his alleged property loss

(invoices, quotes, etc.). Defendant admitted that it had "notice of the potholes in the general area (both east and west bound between Dayton and the Indiana border) on IR 70 on January 13, 2014 at 9:12 a.m., less than 17 hours prior to plaintiff's incident. Crews were sent out the day notice was given and were working on the potholes in the area. In fact crews had been out prior to the notice on January 9, 2014, but due to extreme fog could not work on potholes on Friday because of the safety of ODOT workers."

{¶3} Additionally, defendant contended that the plaintiff did not offer any evidence to prove that the roadway was negligently maintained. Defendant advised that the ODOT "Preble County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month." Defendant stated that "[a] review of the six-month maintenance history for the area in question reveals twenty-seven (27) pothole patching operations were conducted on IR 70 in Preble County; six (6) inclusive of the area of plaintiff's incident." The defendant noted that if ODOT personnel had detected any defects they "would have been promptly scheduled for repair."

{¶4} Plaintiff submitted a response to defendant's investigation report and stated: "[t]hey may have patched some of potholes but I hit them on way back from Indiana." Plaintiff provided a copy of the receipt for repairs per defendant's request.

CONCLUSIONS OF LAW

{¶5} 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. *Armstrong v. Best Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984). However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced

furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.*, 145 Ohio St. 198, 61 N.E. 2d 198 (1945), approved and followed.

{¶6} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation*, 49 Ohio App. 2d 273, 361 N.E.2d 486 (10th Dist. 1976). However, defendant is not an insurer of the safety of its highways. *Kniskern v. Township of Somerford*, 112 Ohio App. 3d 189, 678 N.E. 2d 273 (10th Dist. 1996); *Rhodus v. Ohio Dept. of Trans.*, 67 Ohio App. 3d 723, 588 N.E. 2d 864 (10th Dist. 1990).

{¶7} In order to prove a breach of the duty to maintain highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.*, 31 Ohio Misc. 2d 1, 507 N.E. 2d 179 (Ct. of Cl. 1986). The defendant admitted to actual notice in this case, 17 hours before the plaintiff's incident. Defendant asserted that ODOT workers were in the process of repairing the potholes.

{¶8} Generally, in order to recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove either: 1) defendant had actual or constructive notice of the potholes and failed to respond in a reasonable time or responded in a negligent manner, of 2) defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation*, 75-0287-AD (1976). Plaintiff has not produced any evidence to infer that defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective conditions. *Herlihy v. Ohio Department of Transportation*, 99-07011-AD (1999). However, the defendant admitted that it had notice of the potholes in the area of this incident and took no measures to warn drivers or re-route drivers around the damaged area while they were being repaired.

{¶9} In the instant claim, plaintiff has produced sufficient evidence to prove that defendant was negligent in maintaining the roadway area, or that there was any actionable negligence on the part of the defendant. *Taylor v. Transportation Dept.*, 97-10898-AD (1998); *Weininger v. Department of Transportation*, 99-10909-AD (1999); Witherell v. Ohio Dept. of Transportation, 2000-04758-AD (2000).

{¶10} Plaintiff is granted judgment in the amount of $891.25 plus the $25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. 1990).

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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 $916.25, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk

Entry cc:

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DM/laa
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