

[Cite as *Toney v. Ohio Dept. of Transp.*, 2015-Ohio-5356.]

JASON TONEY

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2015-00398-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Jason Toney (hereinafter “plaintiff”) filed this claim on April 23, 2015 to recover damages which occurred when his 2015 Kia Optima struck a large pothole on March 3, 2015 while he was traveling on I-71 southbound in Fayette County, Ohio. This road is a public road maintained by the Ohio Department of Transportation (hereinafter “ODOT”). Plaintiff’s vehicle sustained damages in the amount of \$167.19. Plaintiff maintains a collision insurance deductible of \$500.00.

{¶2} In order to recover on a claim for roadway damages against ODOT, Ohio law requires that a motorist/plaintiff prove all of the following:

{¶3} That the plaintiff’s motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by ODOT.

{¶4} That ODOT knew or should have known about the dangerous road condition.

{¶5} That ODOT, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

{¶6} In this claim, the Court finds that the plaintiff did prove that his vehicle received damages and that those damages occurred as a result of the plaintiff’s vehicle coming into contact with a dangerous condition on a road maintained by ODOT.

{¶7} The next element that a plaintiff must prove to succeed on a claim such as this is to show that the defendant knew or should have known about this dangerous

condition. Based on the evidence presented, the Court is unable to find that the defendant had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that the defendant should have known about this dangerous condition and thus would have had constructive notice about the highway danger. Constructive notice is defined as “(n)otice arising from the presumption of law from the existence of facts and circumstances that a party has a duty to take notice of...Notice presumed by law to have been acquired by a person and thus imputed to that person.” (Black’s Law Dictionary at 1090 8th Ed. 2004.)

{¶8} In order for there to be constructive notice, a plaintiff must prove that sufficient time has passed after the dangerous condition first appears, so that under the circumstances the defendant should have gained knowledge of its existence. This, the plaintiff has been unable to do.

{¶9} In the Investigation Report filed July 7, 2015, ODOT indicated that the location of the incident was on IR 71, between mile markers 70.0 and 76.0 in Fayette County. This section of the roadway on IR 71 has an average daily traffic count of between 27,980 and 37,950 vehicles. Despite this volume of traffic, ODOT had received no notice of a pothole on this roadway prior to plaintiff’s incident. Thus, the Court is unable to find that ODOT knew about the pothole. Within the past six months, ODOT conducted one hundred seven (107) maintenance operations on IR 71 in Fayette County where this incident occurred. If any pothole was present for any appreciable length of time, it is probable that it would likely have been discovered by ODOT work crews. It is thus likely that the pothole developed only shortly before plaintiff struck it with his vehicle. Finally, the law in Ohio is that ODOT is not an absolute insurer of a motorist’s safety on the highway. The department is only liable for damage when the Court finds that it was negligent. This the Court is unable to do.

{¶10} Since the plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

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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 defendant. Court costs shall be absorbed by the Court.

Entry cc:

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Case No. 2015-00398-AD

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MEMORANDUM DECISION

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