

[Cite as *Pavlot v. Ohio Dept. of Transp.*, 2015-Ohio-5603.]

SCOTT J. PAVLOT

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2015-00108-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Scott J. Pavlot (hereinafter “plaintiff”) filed this claim on February 12, 2015 to recover damages which occurred when his 2009 Mercedes Benz struck multiple potholes on April 25, 2014, while merging onto 59 East in Summit 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 \$1,390.13. Plaintiff maintains a collision insurance deductible of \$1,000.00.

{¶2} The evidence in this case reveals that the area where plaintiff had his accident was a construction zone. ODOT had contracted with Karvo Paving Company to do certain construction work on this section of SR 59 in Summit County.

{¶3} In the Investigation Report filed October 2, 2015, ODOT indicates that the incident involving plaintiff’s vehicle occurred at mile post 2.65 on SR 59 in Summit County. The agency reiterates that this area was part of an ongoing construction project being undertaken by the Karvo Paving Company. The agency maintained that it was not aware of any potholes in the construction area immediately prior to plaintiff’s accident. According to the agency, Karvo Paving had likewise not received any reports of potholes in the vicinity.

{¶4} In a complaint presented to the Court regarding damage to motor vehicles traveling on a state highway in a construction zone, the Court may only pass judgment on whether the plaintiff has shown that ODOT breached its duty to the public in

managing the contractor and ensuring the safety of the public within the construction zone. ODOT could be found negligent in this type of case only if it failed to properly manage the contractor by reasonably inspecting the construction site and the work performance of the contractor, or if the agency knew or should have known about the potholes in question and failed to repair or to require the contractor to repair the road hazard.

{¶5} As we consider whether ODOT breached its duty to the public in keeping the construction area safe, the Court must take into account that this was an active construction zone. Ohio law is clear that ODOT cannot guarantee the same level of safety during a highway construction project as it can under normal traffic conditions. *Feichtner v. Ohio Dept. of Transp.*(1995), 114 Ohio App. 3d346, 354; *Roadway Express, Inc.* The test is whether, under the totality of the circumstances, "ODOT acted sufficiently to render the highway reasonably safe for the traveling public during the construction project." *Basilone v. Ohio Dept. of Transp.* (Feb. 13, 2001), Hamilton App. No. 00AP-811, citing *Feichtner*, and *Lumbermens Mut. Cas. Co. v. Ohio Dept. of Transp.* (1988), 49 Ohio App.3d. 129.

{¶6} In this case, there is nothing in the record that would allow the Court to find that ODOT did not act appropriately to manage the contractor and keep the construction area safe. The plaintiff did not offer any evidence to counter what was in ODOT's report regarding this element.

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

Plaintiff

Clerk Mark H. Reed

v.

ENTRY OF ADMINISTRATIVE
DETERMINATION

OHIO DEPARTMENT OF
TRANSPORTATION

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 the defendant. Court costs are absorbed by the Court.

MARK H. REED
Clerk

Entry cc:

Scott J. Pavlot
290 McKinney Road
Wexford, Pennsylvania 15090

Jerry Wray, Director
Ohio Department Of Transportation
1980 West Broad Street
Mail Stop 1500
Columbus, Ohio 43223