[Cite as *Babbage v. Ohio Dept. of Transp.*, 2015-Ohio-5605.]

LAUREN BABBAGE Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2015-00570-AD Clerk Mark H. Reed MEMORANDUM DECISION

{¶1} Plaintiff Lauren Babbage (hereinafter "plaintiff") filed this claim on June 12, 2015 to recover damages which occurred when her 2014 Toyota Sienna struck multiple potholes on May 1, 2015 while she was traveling on Highway 315 Southbound in Franklin 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 $904.12.

{¶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 her 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 ODOT knew or should have known about this dangerous condition.

Based on the evidence presented, the Court is unable to find that ODOT had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that ODOT 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 ODOT should have gained knowledge of its existence. This, the plaintiff has been unable to do.

{¶9} In an Investigation Report filed August 31, 2015, ODOT indicated that the location of the incident was on SR 315, near mile marker 13.5 in Franklin County. However, in a response filed September 22, 2015, the plaintiff indicated that she believed her accident had occurred not near mile marker 13.5, but rather was between mile markers 14.5 to 16 on this same stretch of highway. Plaintiff also pointed out in that response that another motorist had reported a pothole in this vicinity to ODOT on March 16, 2015. Plaintiff thus believes that this placed the agency on notice that there was, or was likely to be, potholes present on this stretch of the roadway.

{¶10} From the evidence presented, it appears that this section of SR 315 has an average daily traffic count of between 18,800 and 19,280 vehicles. Despite this volume of traffic, ODOT maintains that they had received no notice of a pothole on this section of the roadway, prior to plaintiff's incident. This report would also include the section of highway between mile markers 14 and 16. Any pothole that was reported on March 16 to ODOT is unlikely to have been the same pothole that plaintiff struck several months

later. Further, it is hard to imagine that in the intervening months, ODOT failed to either repair this pothole or that another motorist would have failed to report the continued existence of the pothole on such a heavily traveled section of highway. Thus, the Court is unable to find that ODOT knew about the pothole.

{¶11} Within the past six months, ODOT conducted forty-six (46) maintenance operations on SR 315 in Franklin County where this incident occurred. If any pothole was present for any appreciable length of time prior to plaintiff's accident, it is probable that it would have been discovered by ODOT work crews. It is thus likely that the pothole developed only shortly before plaintiff struck it with her vehicle.

{¶12} 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.

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

LAUREN BABBAGE Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2015-00570-AD Clerk Mark H. Reed <u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>

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 shall be absorbed by the Court.

MARK H. REED
Clerk

Entry cc:

Lauren Babbage
2345 Dennis Road
Williamston, Michigan 48895

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

Filed 11/6/15
Sent to S.C. Reporter 1/14/16