

[Cite as *Kelly v. Ohio Dept. of Transp.*, 2015-Ohio-5609.]

SHANA KELLY

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2015-00696-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Shana Kelly (hereinafter “plaintiff”) filed this claim on July 31, 2015 to recover damages which occurred when her 2011 Chevrolet Impala struck a pothole while traveling on 71 North in Franklin County, Ohio on June 29, 2015. This road is a public road maintained by the Ohio Department of Transportation (hereinafter “ODOT”). Plaintiff’s vehicle sustained damages in the amount of \$108.82. Plaintiff maintains a collision insurance deductible of \$500.00.

{¶2} In order to recover on a claim for roadway damages against the Ohio Department of Transportation (hereinafter “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 result of plaintiff’s vehicle coming into contact with a dangerous condition on a road maintained by ODOT.

{¶7} The next element that plaintiff must prove to succeed on a claim like this is to show that ODOT knew or should have known about this dangerous condition.

{¶8} In the Investigation Report filed October 16, 2015, ODOT indicated that the location of the accident was on IR 71, at mile marker 9.53 in Franklin County. This section of the roadway on IR 71 has an average daily traffic count of between 78,600 and 90,610 vehicles. Despite this volume of traffic, ODOT maintains that it had received no notice of a pothole on this section of the roadway immediately prior to plaintiff's accident.

{¶9} A review of the record leads the Court, however, to make a different conclusion, at least as regards to whether or not ODOT *should have been aware* that there were potholes in the area where plaintiff had her accident. The Court finds that the location where plaintiff had her accident is in a section of Interstate 71, within Franklin County, that had been particularly susceptible to pothole development during the months leading up to plaintiff's accident. ODOT's own records reveal three separate complaints of potholes in the area of plaintiff's accident in the six months prior to June, 2015. Whether these potholes occurred due to issues in design, construction, or maintenance practices is unclear. This unusual situation should have been sufficient to put the agency on at least constructive notice that potholes, such as the one struck by the plaintiff, have a greater frequency to form on this section of the roadway and create dangerous driving conditions for the passing motorists and would thus require greater vigilance in maintenance than other similar sections of interstate highways maintained by the agency.

{¶10} Consistent with these facts then, the Court does find that ODOT is liable for the damages incurred by the plaintiff as a result of her vehicle striking the pothole on June 29, 2015 and therefore finds in favor of the plaintiff.

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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 \$108.82. Court costs are assessed against defendant.

MARK H. REED
Clerk

Entry cc:

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