

[Cite as *Stanziano v. Ohio Dept. of Transp.*, 2005-Ohio-4218.]

IN THE COURT OF CLAIMS OF OHIO

RAY STANZIANO	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01935-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶ 1} 1) On January 15, 2005, plaintiff, Ray Stanziano, was traveling west on US Route 2 past the State Route 83 exit in Lorain County, when his automobile struck a pothole causing damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$468.40, for replacement parts and related expenses. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶ 3} 3) Defendant located the damage-causing pothole "at county milepost 20.54 or state milepost 153.1 , on I-90 or US 2 in Lorain County." Defendant explained Interstate 90 and US Route 2 overlap in Lorain County.

{¶ 4} 4) Defendant denied liability based on the contention no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's property damage occurrence. Defendant stated DOT's records indicate no calls or complaints were received concerning

the particular pothole that damaged plaintiff's automobile. Defendant suggested the pothole developed, "a relatively short amount of time before plaintiff's incident." Defendant asserted roadway inspections are conducted on a routine basis at least one to two times a month. Defendant implied individuals inspecting the roadway site prior to January 15, 2005, did not discover any potholes. DOT employee, Dick Honoshofsky working out of the Lorain County Garage recollected DOT crews were conducting snow and ice removal operations on US Route 2 on January 16, 2005, the day after plaintiff's damage event. Honoshofsky notes DOT personnel likely would have discovered a pothole while performing snow removal. However, the snow removal crews did not notice any defects on US Route 2.

{¶ 5} 5) Defendant contended plaintiff failed to prove DOT negligently maintained the roadway. Defendant claimed the roadway where plaintiff's damage occurred was in good condition on January 15, 2005. DOT maintenance records show two pothole patching operations were needed in the general vicinity of plaintiff's incident in the six-day period preceding the January 15, 2005 property damage event. In fact, the evidence shows DOT personnel had patched the same pothole plaintiff struck on January 10, 2005.

(See *Jennings v. Ohio Dept. of Transportation*, 2005-01391-AD, 2005-Ohio-2873) The pothole patch had apparently deteriorated a short time after repairs were made.

CONCLUSIONS OF LAW

{¶ 6} 1) Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 7} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (pothole) and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶ 8} 3) 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. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 9} 4) Although liability based on notice of the defect may present an unresolved issue in this claim, plaintiff has proven, by a preponderance of the evidence, that defendant did in a general sense, maintain the highway negligently. *Denis*, supra. The fact defendant needed to repair defects in a brief time frame is conclusive evidence of negligent maintenance. *Carter v. Highway Department Transportation O.D.O.T.* (1997), 97-03280-AD, *Reese v. Dept. of Transportation* (1999), 99-05697-AD.,

{¶ 10} 5) Furthermore, the trier of fact finds plaintiff's car struck a pothole which had been patched on January 10, 2005. A pothole patch which deteriorates in less than ten days is prima facie evidence of negligent maintenance. See *Matala v. Department of Transportation*, 2003-01270-AD, 2003-Ohio-2618. Negligence in this action has been proven and defendant is liable for the damage claimed.

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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE

TRANSPORTATION : DETERMINATION

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 plaintiff in the amount of \$493.40, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
6/22
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