



{¶ 4} 4) Defendant provided maintenance records showing two pothole patching operations were needed in the general vicinity of plaintiff's incident during the eight-day period preceding the January 5, 2005, property damage event.

{¶ 5} 5) Defendant submitted a written statement regarding the damage-causing pothole from DOT employee, Tom Vogel, the Wayne County Manager. In his statement Vogel noted:

{¶ 6} The pothole in question was located between the 15.0 mile marker and the 16.9 mile marker of Route 30 in Wayne Co. This section of Route 30 has developed numerous potholes, this due largely to the unusual freeze and thaw cycles we have experienced this year. The incident in this claim took place on Wednesday 01/05/2005. We repaired this section on 12/29/2004. On 01/05/2005 we were involved in snow and ice operations.”

{¶ 7} 6) Defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

{¶ 8} 7) Despite filing a response, plaintiff acknowledged she could not produce evidence establishing the length of time the pothole existed prior to her January 5, 2005, incident.

#### CONCLUSIONS OF LAW

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 3) For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 12} 4) The duty to remove snow and ice does not supersede the duty to repair pavement defects. The duty to repair defects and the duty to remove roadway snow are concurrently equivalent duties. *Farmer v. Department of Transportation* (1999), 99-02931-AD jud; *Kirschner v. Department of Transportation* (1999), 99-04542-AD jud.

{¶ 13} 5) Although liability based on notice of the defects 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 numerous 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. Ohio Dept. of Transportation* (1999), 99-05697-AD.

{¶ 14} 6) Furthermore, the trier of fact finds plaintiff's car struck a pothole which had been patched on either December 28, 2004 or December 29, 2004. 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.

JOANNE M. SCHROCK

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Plaintiff

:

v.

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CASE NO. 2005-02460-AD

OHIO DEPARTMENT OF  
TRANSPORTATION

:

ENTRY OF ADMINISTRATIVE  
DETERMINATION

:

Defendant

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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 \$827.05, 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

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RDK/laa  
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