[Cite as *Bangs v. Ohio Dept. of Transp.*, 2005-Ohio-5395.]

IN THE COURT OF CLAIMS OF OHIO

MICHELLE D. BANGS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07232-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
	:	
Defendant		

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} On or about March 13, 2005, plaintiff, Michelle D. Bangs, was traveling north on Interstate 71 on the ramp to Interstate 480 West in Cuyahoga County, when her automobile struck a large pothole causing damage to the vehicle.

{¶ 2} Plaintiff filed this complaint seeking to recover $533.94, the cost of automotive repair, which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. The $25.00 filing fee was paid and plaintiff requested reimbursement for fees paid.

{¶ 3} Defendant denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence.

{¶ 4} Plaintiff has not submitted any evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶ 5} Defendant has asserted records indicate no calls or complaints were received about the damage-causing pothole prior to

March 13, 2005. Defendant related its employees conduct regular inspections of the roadways and did not discover any potholes on the Interstate 480 West on ramp prior to March 13, 2005.

CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶ 7} 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} There is no evidence defendant had actual notice of the damage-causing pothole.

{¶ 9} The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the defective condition (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 10} Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297.

{¶ 11} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (pothole) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶ 12} No evidence has shown defendant had constructive notice of the pothole.

{¶ 13} Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

IN THE COURT OF CLAIMS OF OHIO

MICHELLE D. BANGS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07232-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE 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 defendant. Court costs are assessed against plaintiff. 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
9/8
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