

IN THE COURT OF CLAIMS OF OHIO

ROBERT M. KRISTOF

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2015-00141-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Robert M. Kristof filed this claim on February 24, 2015, to recover damages which occurred when his 2003 Acura struck a pothole while traveling on I-71 North just north of the Reading Road exit in Hamilton County, Ohio on February 10, 2015. This road is a public road maintained by the Ohio Department of Transportation. Plaintiff's vehicle sustained damages in the amount of \$425.37. Plaintiff maintains an insurance deductible of \$500.00.

{¶2} In order to recover on a claim for roadway damages against the Ohio Department of Transportation, 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 the defendant.

{¶4} That the defendant knew or should have known about the dangerous road condition.

{¶5} That the defendant, 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 his 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 the defendant.

{¶7} The next element that a plaintiff must prove to succeed on a claim such as

this is to show that the defendant knew or should have known about this dangerous condition.

{¶8} Based on the evidence presented, the Court is unable to find that the defendant had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that the defendant 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 8<sup>th</sup> Ed. 2004.)

{¶9} 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 the defendant should have gained knowledge of its existence. This the plaintiff has been unable to do.

{¶10} In an Investigation Report filed May 1, 2015, the defendant stated that the location of the incident was at mile marker 1.2 on IR 71 in Hamilton County. This section of the roadway, on IR 71, has an average daily traffic count of between 52,890 and 62,180 vehicles. Despite this volume of traffic, the department had received no notice of a pothole on this roadway prior to plaintiff’s incident. Thus, the Court is unable to find that the department knew about the pothole. Within the past six months, the department conducted four hundred twenty-four (424) maintenance operations on IR 71 in Hamilton County where this incident occurred. If any pothole was present for any appreciable length of time, it is probable that it would likely have been discovered by the department’s work crews. It is thus likely that the pothole developed only shortly before plaintiff struck it with his vehicle. Finally, the law in Ohio is that the department 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. The plaintiff did not offer any evidence to counter what was in the defendant’s report

regarding this element.

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

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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 defendant. Court costs are assessed against plaintiff.

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MARK H. REED  
Clerk

Entry cc:

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