

[Cite as *Rygiel v. Ohio Dept. of Transp.*, 2003-Ohio-4293.]

IN THE COURT OF CLAIMS OF OHIO

THERESE M. RYGIEL :
 :
 Plaintiff :
 :
 v. : CASE NO. 2003-04911-AD
 :
 OHIO DEPT. OF TRANSPORTATION, : MEMORANDUM DECISION
 DISTRICT 4 :
 :
 Defendant :
 : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On February 20, 2003, at approximately 5:40 p.m., Therese M. Rygiel, was traveling north on Interstate 77 between mileposts 134.00 and 135.00 in Summit County when her automobile struck a "huge" pothole causing tire and wheel damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$735.07, the cost of automobile repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

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

{¶4} 4) Defendant asserted a complaint was received on February 20, 2003 regarding the pothole on Interstate 77. Defendant submitted a document which is essentially a memorialization of this pothole complaint. The information in the

document contains language the pothole was observed "on February 19, 2003? around 5:45 p.m." This particular information is inconclusive to resolve the issue of when the pothole first appeared. Therefore, the trier of fact will not be dissuaded from defendant's assertions concerning lack of notice of the pothole condition.

{¶5} 5) 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.

CONCLUSIONS OF LAW

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

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

{¶9} 4) 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} 5) 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} 6) 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} 7) No evidence has shown defendant had constructive notice of the pothole.

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

{¶14} 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.

The court shall absorb the court costs of this case. 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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Plaintiff, Pro se

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For Defendant

RDK/DRB/laa
7/16
Filed 7/24/03
Sent to S.C. reporter 8/14/03