

[Cite as *Burge v. Ohio Dept. of Transp.*, 2004-Ohio-3589.]

IN THE COURT OF CLAIMS OF OHIO

KELLY A. BURGE :
Plaintiff :
v. : CASE NO. 2004-02920-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION :
Defendant :
: :
: :
: :

FINDINGS OF FACT

{¶1} 1) On January 25, 2004, plaintiff, Kelly A. Burge, was traveling east on U.S. Route 35 near the ramp to Interstate 675 south in Greene County, when her automobile struck a pothole causing damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$237.49, 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. Plaintiff submitted the \$25.00 filing fee.

{¶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) On May 17, 2004, plaintiff filed a response to defendant's investigation report. While plaintiff disputes the location of the pothole asserted in defendant's investigation report, she has not submitted any evidence to indicate the length of time the pothole she struck existed prior to the incident forming the basis of this claim.

{¶5} 5) Defendant has asserted maintenance records show no pothole patching operations were needed in the general vicinity of plaintiff's incident during the six-month period preceding the January 25, 2004, property damage event.

CONCLUSIONS OF LAW

{¶6} 1) Defendant has 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 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 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.

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