

[Cite as *Barnes v. Ohio Dept. of Transp.*, 2004-Ohio-5148.]

IN THE COURT OF CLAIMS OF OHIO

ROYAL L. BARNES	:	
Plaintiff	:	
v.	:	CASE NO. 2004-07140-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
.....	:	

FINDINGS OF FACT

{¶ 1} 1) On June 16, 2004, plaintiff, Royal L. Barnes, was traveling west on US Route 30 near the Calcutta, Ohio exit in Columbiana County, when his automobile struck a pothole causing tire and rim damage to the vehicle. Plaintiff related the pothole his car struck extended across the entire roadway with a maximum depth of approximately eight inches. Plaintiff submitted photographic evidence of the pothole which appeared to be a deteriorated patch from a previous pothole repair operation.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$756.16, the cost of replacement tires and rims, plus related expenses. Plaintiff contended he incurred these damages as a result of negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. The requisite material filing fee was paid.

{¶ 3} 3) Defendant located the pothole plaintiff’s car struck, “at approximately milepost 31.39 on US 30 which overlaps SR 11 in Columbiana County.” Defendant denied any liability in this matter based on the allegation DOT did not have any notice of the pothole prior to plaintiff’s property damage occurrence. Defendant speculated the pothole defect likely was formed a short time before the June 16, 2004, incident. Additionally, defendant contended plaintiff did not produce sufficient evidence to prove the roadway was negligently maintained by DOT personnel. Defendant

explained US Route 30 is inspected “at least one to two times a month” for defects such as potholes. There is no record when the last inspection was conducted prior to June 16, 2004.

{¶ 4} 4) Defendant submitted records showing pothole patching operations were conducted in the general vicinity of plaintiff’s property damage event on four dates in 2004 prior to June 16, 2004. Pothole patching was done on February 18, 2004, March 11, 2004, May 15, 2004, and June 12, 2004. The pothole plaintiff’s car struck was formed due to a patch failure. This pothole therefore, had been repaired at least one time if not multiple times prior to plaintiff’s June 16, 2004, incident.

{¶ 5} 5) Plaintiff related he was told by an officer of the St. Clair Police Department that the pothole had been reported. It is unclear whether or not the pothole was reported before or after plaintiff’s damage occurrence. It is also unclear whether or not the pothole was reported to DOT. DOT has denied receiving any reports of this pothole prior to June 16, 2004. Plaintiff submitted a statement from his daughter, Tina M. Brown, who witnessed the incident forming the basis of this claim and the aftermath. Tina M. Brown stated she heard the investigating police officer remark that the pothole her father’s car struck had previously been reported. Brown also stated she talked to a dispatcher at the local Ohio State Highway Patrol post who informed her another motorist had struck the pothole on US Route 30 one day prior to June 16, 2004.¹

CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to maintain its highway 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.

{¶ 7} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the 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*

¹ Plaintiff filed a response on August 16, 2004.

(1976), 75-0287-AD. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶ 8} While the issue of notice remains in dispute with plaintiff failing to provide sufficient evidence of prior notice, the court concludes plaintiff has proved his property damage was proximately caused by negligent roadway maintenance. The photographic evidence of the roadway defect which damaged plaintiff's car, depicts a substantial deterioration of a previous patch. This deteriorated condition shows a broken collapsed patched area that constitutes a negligently maintained condition. The repair patch proved inadequate and deteriorated within a time period as short as four days since repairs were conducted. Therefore, defendant is liable to plaintiff for the property damage he sustained.

IN THE COURT OF CLAIMS OF OHIO

ROYAL L. BARNES	:	
Plaintiff	:	
v.	:	CASE NO. 2004-07140-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
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 plaintiff in the amount of \$781.16, 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

Entry cc:

Royal L. Barnes
8896 School Street
Windham, Ohio 44288

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa
8/19
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