[Cite as *Arnold v. Ohio Dept. of Transp.*, 2006-Ohio-7209.]

IN THE COURT OF CLAIMS OF OHIO

SARAH ARNOLD :

Plaintiff :

v. : CASE NO. 2006-02471-AD

DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION

Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Sarah Arnold, stated she was traveling north on Interstate 75 on January 25, 2006, at approximately 5:30 p.m., when her 1993 Honda Accord struck "a huge pothole" causing substantial damage to the vehicle. Plaintiff related the damage to her automobile included two bent rims, two punctured tires, a broken strut, a broken coil spring, and a broken front bumper.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover $1,941.16, her total cost of automotive repair, which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff's incident. Defendant suggested the pothole plaintiff's car struck probably existed, "for only a short time before the incident." Defendant related

DOT, "called plaintiff to get a more specific location (of the pothole) and she stated that it was at milemarker 12.0 in Hamilton County." Defendant generally located the pothole at the approach to Lockland Corporation and Reading Road. Defendant's evidence shows complaints were received by DOT on January 19, and January 20, 2006 about potholes on Interstate 75 in Hamilton County. However, complaints were received about potholes at locations on Interstate 75 other than milepost 12.0.

{¶ 4} 4) Despite filing a response, plaintiff did not submit any evidence to establish the length of time the damage-causing pothole existed prior to the January 25, 2006, property damage event. Plaintiff stated the pothole her car struck was actually located at milepost 9.6 on Interstate 75 and not milepost 12.0. Plaintiff pointed out she finally pulled her automobile over at around milepost 12.0 after striking a pothole at around milepost 9.6. Plaintiff noted DOT's complaint log shows a pothole complaint was received on January 6, 2006, regarding a pothole at milepost 9.0 on Interstate 75. Defendant's records show potholes were patched on Interstate 75 on January 9, January 10, January 24, and January 25, 2006. These patching operations were conducted between mileposts 8.5 and 15.0. Potholes at milepost 9.6 were patched on January 25, 2006, the day of plaintiff's incident. Plaintiff related there are several potholes between mileposts 9.0 and 13.0 on Interstate 75 that have not been repaired to date. Plaintiff maintained the pothole her car struck at milepost 9.6 had not been repaired as of May 21, 2006. Plaintiff submitted photographs depicting the

pothole at milepost 9.6 on Interstate 75. The trier of fact, after examining the photographs, finds the defects depicted appear to be minor.

{¶ 5} 5) Furthermore, defendant explained a DOT employee conducts roadway inspections of Interstate 75 at least two times a month and any discovered defects are promptly repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

CONCLUSIONS OF LAW

{¶ 6} 1) Defendant has the duty to maintain its highways 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} 2) In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. 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} 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 the dangerous condition (pothole) appears, so that under the circumstances, defendant should have acquired knowledge of the existence of the defect. *Guiher v. Department of Transportation* (1978), 78-0126-AD.

{¶ 12}7) No evidence has shown defendant had constructive notice of the pothole.

{¶ 13}8) Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

IN THE COURT OF CLAIMS OF OHIO

SARAH ARNOLD	:	
Plaintiff	:	
v.	:	CASE NO. 2006-02471-AD
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:

Sarah Arnold
923 Delhi Drive
Trenton, Ohio 45067

Plaintiff, Pro se

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

For Defendant

RDK/laa
6/9
Filed 6/30/06
Sent to S.C. reporter 3/21/07