

[Cite as *VanFossen v. Ohio Dept. of Transp.*, 2015-Ohio-4941.]

LISA VANFOSSEN

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2015-00177-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Lisa VanFossen filed this claim on March 9, 2015 to recover damages which occurred when her vehicle struck a large boulder on January 21, 2015 while traveling on St. Rt. 266 South in Morgan County Ohio. This road is a public road maintained by the Ohio Department of Transportation. Plaintiff's vehicle sustained damages in the amount of \$323.99. Plaintiff maintains a collision insurance deductible of \$250.00.

{¶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 her 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. 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.)

{¶8} 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.

{¶9} In the Investigation Report filed May 26, 2015 the defendant stated that the location of the incident was on SR 266 in Morgan County, 0.3 miles south of mile marker 15. This section of the roadway has an average daily traffic count of between 650 and 680 vehicles. Despite this volume of traffic, the department had received no notice of debris/boulders on this road thus, the Court is unable to find that the department knew about the boulders. Within the past six months, the department had also conducted fifty-one (51) maintenance operations on SR 266 in Morgan County without discovering any debris or boulders. A review of the inspections performed by ODOT and submitted to the Court does not show a report of these boulders. If a boulder was on the roadway for any appreciable length of time, it is probable that it would likely have been discovered by the department’s work crews. Thus, the Court cannot find that the department should have known about this debris.

{¶10} Under Ohio law, the burden of proof in civil claims like this one rests on the plaintiff. Admittedly, this places a difficult task on a plaintiff in a claim like this against ODOT. However, this is the law that is binding on this Court at the present time.

{¶11} 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.

{¶12} 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

Case No. 2015-00177-AD

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MEMORANDUM DECISION

Entry cc:

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