[Cite as *Gaffney v. Ohio Dept. of Transp.*, 2017-Ohio-8078.]

DONNA GAFFNEY Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2017-00342-AD Clerk Mark H. Reed MEMORANDUM DECISION

{¶1} Plaintiff Donna Gaffney (hereinafter "plaintiff") filed this claim on April 14, 2017, to recover damages which occurred when her 2009 Volkswagen Jetta struck a pothole on March 27, 2017, while traveling northbound on Colerain Avenue (US 27) in Hamilton County, Ohio. This road is a public road maintained by the Ohio Department of Transportation (hereinafter "ODOT"). Plaintiff's vehicle sustained damages in the amount of $125.87. Plaintiff maintains a collision insurance deductible of $1,000.00.

{¶2} In order to recover on a claim for roadway damages against ODOT, 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 ODOT.

{¶4} That ODOT knew or should have known about the dangerous road condition.

{¶5} That ODOT, 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 ODOT.

{¶7} The next element that a plaintiff must prove to succeed on a claim such as this is to show that ODOT knew or should have known about this dangerous condition.

Based on the evidence presented, the Court is unable to find that ODOT had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that ODOT 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 8th 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 ODOT should have gained knowledge of its existence. This, the plaintiff has been unable to do.

{¶9} In the Investigation Report filed July 20, 2017, ODOT indicated that the location of the incident was on US 27, near mile marker 9.8-10.0 in Hamilton County. (The plaintiff correctly points out that the ODOT investigation report indicates that the accident location was between Jersey Road and Blue Ridge Road on Colerain Avenue and not Jessup Road, as plaintiff claims, it appears that the allusion to Jersey Road was merely a typographical error. There is no Jersey Road adjoining US 27 in Hamilton County. In fact, the only Jersey Road in Hamilton County appears to be a residential street in Salyer Park, a community a significant distance from where plaintiff had her accident.)

{¶10} This section of the roadway on US 27 has an average daily traffic count of between 20,680 and 29,760 vehicles. Despite this volume of traffic, ODOT had received no notice of a pothole on this section of the roadway prior to plaintiff's incident. Thus, the Court is unable to find that ODOT knew about the pothole.

{¶11} Within the past six months, ODOT conducted two hundred thirteen (213) maintenance operations on US 27 in Hamilton County near where this incident

occurred. If any pothole was present for any appreciable length of time, it is probable that it would have been discovered by ODOT work crews. It is thus likely that the pothole developed only shortly before plaintiff struck it with her vehicle.

{¶12} Finally, the law in Ohio is that ODOT 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.

{¶13} Since the plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

DONNA GAFFNEY Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2017-00342-AD Clerk Mark H. Reed <u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>

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 the defendant. Court costs shall be absorbed by the Court.

MARK H. REED
Clerk

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