

[Cite as *Alshaikh v. Ohio Dept. of Transp.*, 2018-Ohio-1668.]

ZAINAB AL ALSHAIKH

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2017-00947AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff Zainab Al Alshaikh (“plaintiff”) filed this claim against defendant, Ohio Department of Transportation (“ODOT”), to recover damages which occurred on November 18, 2017 when his vehicle struck a pool of water, causing his car to hydroplane, while traveling on I-71 southbound in Hamilton County, Ohio. This road is a public road maintained by the Ohio Department of Transportation (“ODOT”). Plaintiff’s vehicle sustained damages in the amount of \$1386.00.

{¶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 his 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

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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, ODOT stated that the location of the incident was on IR 71 in Hamilton County, at mile marker 6.55. This section of the roadway has an average daily traffic count of between 120,740 to 131,780 vehicles. Despite this volume of traffic, ODOT had received no notice of any pool of water on this section of the road, thus the Court is unable to find that ODOT knew about this water. Within the past six months, ODOT had also conducted four hundred thirty-one (431) maintenance operations on IR 71 in Hamilton County without discovering any pools of water. If this had existed for any appreciable length of time on this section of the roadway, it is probable that it would likely have been discovered by ODOT’s work crews. Thus, the Court cannot find that ODOT should have known about this situation. It is thus likely that the pool of water had only recently developed in the roadway and that ODOT had not been notified regarding this hazard.

{¶10} Under Ohio law, the burden of proof in civil claims like this one rests on the plaintiff. The plaintiff, to succeed on the claim, must prove that ODOT either knew or reasonably should have known about the pooling water. Admittedly, this places a

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difficult task on a plaintiff in a claim such as 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 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.

{¶12} After examining all evidence available, this court concludes the sole proximate cause of plaintiff’s damage was his own negligence in failing to control his vehicle when encountering clearly visible standing water conditions on the roadway. See also, *Mueller v. Ohio Department of Transportation*, 2006-01203-AD (December 5, 2006).

{¶13} Therefore, plaintiff’s 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 the defendant. Court costs shall be absorbed by the Court.

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DANIEL R. BORCHERT
Interim Clerk

CC:

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