

property damage was proximately caused by negligence on the part of DOT in either failing to adequately patch an existing pothole or failing to timely respond to repair a newly formed roadway defect. The requisite material \$25.00 filing fee was paid.

{¶ 1} Defendant denied any liability in this matter. Defendant explained its investigation located the pothole plaintiff's vehicle struck at somewhere "between mileposts 14.14 and 16.71 (US Route 322) in Cuyahoga County." DOT denied having any knowledge of the pothole prior to plaintiff's property damage occurrence. Despite plaintiff's submission of the call record indicating DOT had previously been contacted about the pothole, defendant has no record of being contacted about a pothole on US Route 322 in Gates Mills at or near the time of plaintiff's incident. Therefore, defendant denied receiving any complaints of a pothole on the roadway at any reasonable time prior to 1:30 a.m. on April 4, 2004. Defendant speculated the damage-causing pothole probably existed for "a relatively short period of time before plaintiff's incident." Defendant submitted copies of radio logs from the Mayfield Station of DOT District 12, the station in charge of maintenance for US Route 322 in Gates Mills. These radio logs contain entries spanning the time frame from January 6, 2004, to May 18, 2004. There are no entries regarding the discovery of

{¶ 2} potholes on US 322 in Gates Mills. In the nearly one hundred entries recorded on the Mayfield Station radio log, two entries report potholes on roadways other than US Route 322 and one entry recorded potholes were repaired on a roadway other than US 322.

{¶ 3} Defendant stated DOT conducted four pothole patching operations in the general vicinity of plaintiff's incident during a five-week period prior to April 4, 2004. Potholes were patched on US Route 322 on March 2, March 9, March 24, and April 2, 2004. None of these instances of pothole patching were reported on the submitted Mayfield Station radio log. Defendant has asserted plaintiff has failed to produce sufficient evidence to establish any negligent act or omission by DOT personnel caused the property damage on April 4, 2004.

{¶ 4} Plaintiff asserted the pothole his automobile struck had previously been patched by DOT personnel and the patching material had deteriorated. Plaintiff further asserted the pothole that was present on April 4, 2004, was the result of poor and incorrect patching operations conducted by

defendant.¹

{¶ 5} 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.

{¶ 6} 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* (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.

{¶ 7} 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 court finds persuasive plaintiff's contentions that the damage-causing pothole was a previously patched defect which had rapidly deteriorated. Considering the evidence available, this deteriorated condition caused by patch failure could have occurred within a time period as long as thirty-three days or as short as two days. Such a rapid rate regarding patch deterioration establishes the damage-causing pothole was inadequately and, therefore, negligently repaired. Consequently, defendant is liable to plaintiff for the property damage claimed.

IN THE COURT OF CLAIMS OF OHIO

GREGORY P. HOCEVAR :

Plaintiff :

v. :

CASE NO. 2004-05791-AD

¹ Plaintiff filed a response (8/20/04).

OHIO DEPARTMENT OF
TRANSPORTATION, D-12

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant

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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 \$1,508.64, 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:

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Plaintiff, Pro se

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For Defendant

RDK/laa
8/26
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