

of this claim. Defendant patched the pothole plaintiff's car struck using approximately five hundred pounds of cold mix patching material. Defendant denied U.S. Route 23 was negligently maintained.

{¶4} 4) On May 28, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff asserted the damage to her vehicle was the result of defendant's failure to adequately patch the damage causing pothole during February 2003. Plaintiff contended defendant conducted a poor patch job which ultimately led to a rapid deterioration of the pothole repair. Plaintiff suggested the damage causing pothole had existed about two weeks prior to her incident. However, plaintiff did not produce any evidence to establish the length of time the pothole was on the roadway prior to her property damage occurrence.

{¶5} 5) On June 9, 2003, defendant filed a reply to plaintiff's response. Defendant denied the pothole repair made on February 28, 2003 was performed in a negligent manner, despite the fact the repair patch had completely deteriorated by March 22, 2003.

{¶6} 6) On June 23, 2003, plaintiff filed a response to defendant's reply. Plaintiff asserts she notified the Columbus Police Department about the pothole after her incident. Plaintiff maintains defendant should be responsible for her damages.

CONCLUSIONS OF LAW

{¶7} Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, either: 1) that defendant had actual or constructive notice of the defect (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; *O'Hearn v. Ohio Department of Transportation* (1985), 84-03278-AD.

{¶8} In the instant claim, plaintiff has proven by a preponderance of the evidence that defendant did, in a general sense, maintain the highway in a negligent manner. *Dennis*, supra. The fact the pothole plaintiff struck had emerged within a relatively short

time after repair, thereby necessitating further repair, is evidence of negligent maintenance. *Carter v. O.D.O.T.* (1997), 97-03280-AD. Consequently, defendant is liable to plaintiff for the cost of automotive repair and replacement parts, \$220.01, plus \$25.00 for filing fee reimbursement. However, plaintiff's claim of \$27.00 for the loss of paid tuition for her child is denied. Plaintiff has failed to prove this damage claim was a natural and proximate result of defendant's negligence.

{¶9} 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 \$245.01, 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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