

**IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
WESTERN DIVISION**

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

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JENNY JOHNSONIUS,
Claimant,

v.

Claim Number T20151520

STATE OF TENNESSEE,
Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND DENYING CLAIMANT'S MOTION FOR SUMMARY JUDGMENT**

This matter came before James A. Hamilton III, Commissioner of the Tennessee Claims Commission, Western Division. The Complaint was brought under § 9-8-307(a)(1)(J) alleging dangerous conditions on state maintained highways and § 9-8-307(a)(1)(I), alleging negligent maintenance of state highways.

Claimant alleges that as she was traveling north on Highway 641 in Henry County, Tennessee, she encountered multiple potholes. Claimant struck one of the potholes. As a result of the incident two of Claimant's tires were damaged as well as two tire rims which could not be repaired. Claimant sought a judgment for damages to her vehicle in the amount of One Thousand Nine Hundred Forty Five and 29/100 Dollars (\$1,945.29).

Defendant filed a Motion for Summary Judgment alleging Claimant had failed to show (1) that the Tennessee Department of Transportation, hereinafter

referred to as TDOT, negligently maintained the highway in question and (2) that TDOT had no active or constructive notice of any defect in the roadway prior to the incident. Defendant relies upon the affidavits of Danny Laughlin, the TDOT Transportation Project Specialist Senior for Region IV, Ralph Cobb, an Operations Tech 3 for TDOT and David Galey, a TDOT Operations District Assistant for District 47 East. Mr. Laughlin, Mr. Cobb and Mr. Galey each testified as to their job duties for TDOT and that their job duties included Henry County, Tennessee. Defendant relies upon the three Affidavits to support its contention that the highway was properly maintained and the State had not notice of the potholes Claimant allegedly struck.

In response to Defendant's Motion for Summary Judgment Claimant filed a document entitled, "I Agree Summary Judgment for: Jenny Ross Johnsonius." The Commission deems Claimant's pleading is a Motion for Summary Judgment on behalf of Claimant.

I.

FACTS

On March 8, 2015, at approximately 11:00 a.m. Jenny Johnsonius was traveling north on Highway 641 in Henry County, Tennessee. She was one and two tenths (1.2) miles from the court square in Paris, Tennessee, when she hit a pothole. (Complaint Form) A telephonic hearing was held on February 22, 2016, at which time the parties argued their respective positions. During the hearing Claimant stated there were multiple potholes in the roadway which she had to weave through. Claimant hit one of the potholes. After hitting the pothole two

tires on Claimant's vehicle were damaged. Two of Claimant's tire rims were also damaged beyond repair. In support of her claim, Claimant submitted two repair estimates one of which was from Joe and Jerry's Car Care Center and the other being from her automobile insurer. One estimate was in the amount of One Thousand Seven Hundred Fifty Four and 12/100 Dollars (\$1,754.12); the second was in the amount of One Thousand Nine Hundred Forty Five and 29/100 Dollars (\$1,945.29). In her Complaint Form, Claimant sought a judgment in the amount of One Thousand Nine Hundred Forty Five and 29/100 Dollars (\$1,945.29).

In response to Claimant's Complaint Form Defendant filed a Motion for Summary Judgment. Defendant maintains Claimant cannot prevail in this claim because she has failed to show that TDOT negligently inspected or maintained the roadway in question. Furthermore, Defendant contends that Claimant has failed to show that TDOT had notice of the potholes in question at a time sufficiently prior to the incident for the State to have taken appropriate remedial measures.

In his affidavit, Danny Laughlin stated that his professional duties on or about March 8, 2015, included oversight and maintenance of all roads and highways designated by TDOT as being on the state system of highways within Region IV which includes Highway 641 North near Paris, Tennessee. (Laughlin Aff. para. 3)

Mr. Laughlin further stated that as part of the routine maintenance TDOT assigns employees to travel the state routes and interstates within Henry County, Tennessee, daily to locate conditions in need of repair. Once a maintenance

concern or dangerous condition is identified the condition is reported to the TDOT operations office. After TDOT receives notification of a maintenance concern TDOT personnel are dispatched as soon as possible to remedy the condition. (Laughlin Aff. para. 4).

In addition, TDOT HELP trucks patrol the highways within Henry County and notify the TDOT operations office of any road condition requiring maintenance. (Laughlin Aff. para. 5).

TDOT is also made aware of dangerous road conditions by complaints from the Tennessee Highway Patrol, city police departments and motorists. (Laughlin Aff. Para. 6). Mr. Laughlin expressed familiarity with Claimant's claim arising out of a motor vehicle incident that occurred on March 8, 2015, when Claimant struck a pothole on Highway 641 located 1.2 miles north of the court square in Paris, Henry County, Tennessee. Mr. Laughlin was not aware of, nor do departmental records reflect that TDOT had knowledge of the alleged pothole(s) on Highway 641 located 1.2 miles north of the court square in Paris, Henry County, Tennessee, prior to March 8, 2015. (Laughlin Aff. Para. 8).

Mr. Laughlin stated potholes can form at any time without warning due to a variety of factors including weather and the amount of traffic on a particular highway.

In addition, a state of emergency had been declared by Tennessee's Governor due to ice/snow storms. The state of emergency began on February 16, 2015, and continued through March 6, 2015.

In response to the declared state of emergency TDOT utilized all of its available manpower to clear the snow and ice from the State Routes and to make the roads as safe as possible during the time of emergency. The condition of the road consisting of rain, snow and ice, impeded TDOT's ability to quickly repair any road hazards caused by the winter weather. Mr. Laughlin further stated these conditions consisting of rain, snow and ice, contributed to the formation of potholes along State Routes. (Laughlin Aff. Para. 10).

Ralph Cobb stated in his Affidavit that he is an Operations Tech 3 for Henry County, Tennessee. Mr. Cobb was also familiar with Claimant's claim for damages after having struck a pothole on Highway 641. (Cobb Aff. Para. 2, 3).

Mr. Cobb stated that prior to Claimant's incident, TDOT had not received any complaints of, nor did TDOT have knowledge of the alleged pothole(s) on Highway 641 located 1.2 miles north of the court square in Paris, Henry County, Tennessee. (Cobb Aff. Para. 4). Mr. Cobb did receive a call in March, 2015, at which time his office was notified of Claimant's incident. Upon learning of the incident Mr. Cobb drove to the point on Highway 641 North which was located 1.2 miles north of the court square in Paris, Tennessee. Mr. Cobb also described the point on the highway in question as being mile 12.36 on State Route 54. Upon his arrival at the scene, Mr. Cobb found only potholes located at the edge of the pavement on the shoulder of Highway 641 North. (Cobb Aff. Para. 5). Mr. Cobb did not have sufficient cold patch with him to immediately fix the potholes. However, TDOT employees were dispatched the same day to repair the potholes located on the shoulder of Highway 641 North which was 1.2 miles north of the

court square in Paris, Henry County, Tennessee. (Cobb Aff. Para. 6). Mr. Cobb also stated that from February 16, 2015, through March 6, 2015, Henry County was under a state of emergency which had been declared by the Governor. During the state of emergency Mr. Cobb's office was using all of its available manpower to fix potholes and other road conditions created by the winter weather, provided the weather permitted them to make such repairs. (Cobb Aff. Para. 7).

The Affidavit of David Galey was also filed in support of Defendant's Motion for Summary Judgment. Mr. Galey stated he is an Operations District Assistance for District 47 East which includes Henry County. Mr. Galey was also familiar with Claimant's claim arising out of the incident that occurred on March 8, 2015, on Highway 641 north of downtown Paris, Tennessee. (Galey Aff. Para. 3). Mr. Galey assisted in the investigation of the incident by driving north on Highway 641 to a point 1.2 miles north of the court square in Paris, Tennessee. Mr. Galey confirmed the location was also identified as mile 12.360 on State Route 54. Mr. Galey prepared a map of the area which was attached as an exhibit to his Affidavit. (Galey Aff. Para. 4; Exhibit 1).

Mr. Galey acknowledged that photographs of the area were also taken but the photographs were not taken until May 20, 2015. Mr. Galey attached as two additional exhibits to his Affidavit photographs of the areas which had allegedly been repaired due to potholes. Mr. Galey represented to the Commission that the photographs fairly and accurately depicted what he saw on Highway 641 at a point 1.2 miles north of the court square in Paris, Tennessee, on May 20, 2015.

(Galey Aff. Para. 5; Exhibits 2, 3). The two photographs, namely Exhibits 2 and 3, depict the two potholes which had been repaired. The photographs show both potholes began on the fog line of the northbound lane and continued in an direction away from travelled portion of Highway 641. (Galey Aff. Exhibits 2, 3).

Eastbound

RE-TUPPED THE CENTER LINE AND FOG LINE OF THE NORTHBOUND

~~SOUTHBOUND~~

LANE

There were no photographs presented by either Claimant or Defendant which showed a pothole in the travelled portion of Highway 641 or any remedial repairs which had been made to any potholes within the traveled portion of Highway 641.

Claimant stated during the telephonic hearing she had called Ray Norwood to report the potholes on Highway 641. Claimant identified Ray Norwood was the Henry County Road Commissioner. Claimant had also filed newspaper articles along with her Compliant Form which spoke in general terms of the road conditions and in particular the road conditions in Henry County, Tennessee. Claimant was also of the opinion she had called an 800 number which was provided on a TDOT message board. Claimant was not sure of the date she called the 800 number but was of the opinion it would have been the first part of March 2015. Finally, Claimant indicated the incident occurred on a Sunday, the weather conditions were clear and that she had was travelling at a rate of speed of approximately thirty miles per hour when the incident occurred.

II.

To prevail under Tenn. Code Ann. § 9-8-307(a)(1)(J), the Claimant must prove by a preponderance of the evidence "notice given to the proper state

(Galey Aff. Para. 5; Exhibits 2, 3). The two photographs, namely Exhibits 2 and 3, depict the two potholes which had been repaired. The photographs show both potholes began on the fog line of the northbound lane and continued in an easterly direction or away from travelled portion of Highway 641. (Galey Aff. Exhibits 2, 3).

There were no photographs presented by either Claimant or Defendant which showed a pothole in the travelled portion of Highway 641 or any remedial repairs which had been made to any potholes between the central line and fog line of the northbound lane of Highway 641.

Claimant stated during the telephonic hearing she had called Ray Norwood to report the potholes on Highway 641. Claimant identified Ray Norwood was the Henry County Road Commissioner. Claimant had also filed newspaper articles along with her Compliant Form which spoke in general terms of the road conditions and in particular the road conditions in Henry County, Tennessee. Claimant was also of the opinion she had called an 800 number which was provided on a TDOT message board. Claimant was not sure of the date she called the 800 number but was of the opinion it would have been the first part of March 2015. Finally, Claimant indicated the incident occurred on a Sunday, the weather conditions were clear and that she had was travelling at a rate of speed of approximately thirty miles per hour when the incident occurred.

II.

To prevail under Tenn. Code Ann. § 9-8-307(a)(1)(J), the Claimant must prove by a preponderance of the evidence “notice given to the proper *state*

officials at a time sufficiently prior to the injury for the state to have taken appropriate measures.”

There is nothing in the record to indicate how long the pothole(s) may have existed. There is no proof notice of the allegedly defective condition of the highway had been personally reported to a state official responsible for repairing the roadway before Claimant's incident on March 8, 2015. Claimant does allege she telephoned an 800 number provided by TDOT. Even if it is assumed Defendant did have notice of the pothole(s), the State must be given sufficient time to take appropriate action after notice of a defect is given. Assuming Claimant gave notice of the pothole(s) during the first part of March, it is undisputed the State was under a state of emergency from February 16, 2015, through March 6, 2015.

Mr. Laughlin and Mr. Cobb testified Defendant had not received any complaints of nor did it have knowledge of pothole(s) on Highway 641 in the area described by Ms. Johnsonius prior to March 8, 2015. (Laughlin Aff. Para. 8; Cobb Aff. Para. 4).

Mr. Laughlin and Mr. Cobb's statements are not disputed by Claimant except to say she telephoned the 800 number sometime during the first part of March 2015. The Defendant would have been entitled to a reasonable amount of time to take remedial measures upon being notified of potholes. It is undisputed TDOT was operating under a state of emergency until March 7, 2015.

The Commission **FINDS** that Claimant failed to prove by a preponderance of the evidence that Defendant violated Tenn. Code Ann. § 9-8-307(a)(1)(J).

Tenn. Code Ann. § 9-8-307(a)(1)(I), which deals with the negligent maintenance of state highways, does not require the State have notice of the dangerous condition prior to a finding of negligence. Instead, as in all negligence cases, Claimant must prove that Defendant owed her a duty of care, that it breached that duty, and that the breach was the cause in fact and legal cause of her injuries. *McClenahan v. Cooley*, 806 S.W.2d 767 (Tenn. 1991) It is well-settled that the State of Tennessee has a duty to those lawfully traversing its highways to exercise reasonable care in the maintenance of those highways. *Goodermote v. State*, 856 S.W.2d 715 (Tenn.App. 1993), *perm. app. denied* June 1, 1993

Thus, to prevail in this case, Claimant must prove that the State failed to exercise reasonable care under the circumstances in the maintenance of Highway 641 in Henry County, Tennessee. The mere existence of a hazard or a pothole on a state highway alone is not sufficient to establish that the State of Tennessee was negligent in dealing with it.

While there is no notice requirement under § 9-8-307(a)(1)(I), Tenn. Code Ann. , the length of time a condition was allowed to exist was clearly relevant to the issue of whether the State exercised reasonable care in its maintenance of Interstate 641. There was no testimony from Claimant that multiple potholes had existed in the traveled portion of the roadway for such a prolonged period of time that the road conditions should have been detected and remedied by Defendant prior to Claimant's incident. To the contrary, the State of Tennessee had been under a state of emergency through March 6, 2015, which had made remedial

measures difficult, if not impossible. Furthermore, the photographic evidence only showed potholes on or near the fog line and not in the traveled portion of the highway.

The Commission **FINDS** that Claimant failed to prove by a preponderance of the evidence that the State of Tennessee breached its duty in its maintenance of Highway 641 in Henry County, Tennessee.

The Commission **FINDS** the Defendant's Motion for Summary Judgement is well taken and should be granted and that Claimant's Motion for Summary Judgment should be denied.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that Claimant's Motion for Summary Judgment is **DENIED** and Defendant's Motion for Summary Judgement be and the same is hereby **GRANTED** and this claim is **DISMISSED**.



James A. Hamilton III
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Jenny Johnsonius
1301 Chickasaw St.
Paris, TN 38242

Madeline B. Brough, Esq.
Assistant Attorney General
Civil Rights and Claims Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

on this the 3rd day of March, 2016.

Paula Merrifield

**PAULA MERRIFIELD, CLERK
TENNESSEE CLAIMS COMMISSION**