

motorists may lawfully exit onto Kenton-Galion Road. Just east of the intersection, the center lines resume as solid for eastbound and dashed for westbound traffic; they then become double solid lines for the remainder of the curve.

{¶ 5} Lybomir Galay and Mykhaylo Ogonovskiy were traveling westbound on SR 309 while Angel Woodruff was traveling eastbound on SR 309 toward Kenton-Galion Road. Woodruff testified that she thought that she had the right-of-way to drive “straight” onto Kenton-Galion Road from SR 309. As Woodruff proceeded onto Kenton-Galion Road, her vehicle collided with Galay and Ogonovskiy’s vehicle, killing Galay and Ogonovskiy and injuring Woodruff and her passenger.

{¶ 6} Plaintiff asserts that the intersection was a “Y” intersection and that defendant failed to provide adequate signage to warn eastbound motorists on SR 309 to yield to oncoming traffic when exiting onto Kenton-Galion Road.

{¶ 7} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed plaintiff’s decedents a duty, that it breached that duty, and that the breach proximately caused their injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Defendant has a general duty to maintain its highways in a reasonably safe condition. *Knickel v. Ohio Dept. of Transp.* (1976), 49 Ohio App.2d 335. However, defendant is not an insurer of the safety of its highways. See *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App.3d 723.

{¶ 8} Pursuant to R.C. 4511.09, defendant is required to adopt and utilize a manual with specifications for a uniform system of traffic control devices. In order for defendant to be negligent for failing to properly place or maintain a traffic control device, plaintiff must show that defendant failed to comply with the Manual of Uniform Traffic Control Devices (Manual). *Dunn v. Ohio Dept. of Transp.* (Jan. 13, 1992), Court of Claims No. 90-07280. The scope of defendant’s duty to ensure the safety of state highways is defined by the Manual. *Leskovac v. Ohio Dept. of Transp.* (1990), 71 Ohio App.3d 22, 27. Certain portions of the Manual are permissive, meaning some decisions are within defendant’s discretion and engineering judgment. *Perkins v. Ohio Dept. of Transp.* (1989), 65 Ohio App.3d 487. “The issue of whether an act constitutes a mandatory duty or a discretionary act determines the scope of the state’s liability because ODOT is immune from liability for damages resulting from not performing a discretionary act.” *Gregory v. Ohio Dept. of Transp.* (1995), 107

Ohio App.3d 30, 33-34, citing, *Winwood v. Dayton* (1988), 37 Ohio St.3d 282. When the duty, or standard of care, is not detailed in defendant's Manual, "the proper standard should be that of a reasonable engineer using accepted practices at the time." *Lunar v. Ohio Dept. of Transp.* (1989), 61 Ohio App.3d 143, 147.

{¶ 9} James Madden, plaintiff's expert, testified that as a forensic engineer part of his duties included analyzing safety hazards on roadways. Madden visited the accident site, took photos, and recorded a video of the scene. Madden described the path of travel from eastbound SR 309 to Kenton-Galion Road as a "straight line" and stated that the intersection presented a situation where two opposing streams of traffic both had the right-of-way; namely, motorists traveling eastbound on SR 309 exiting onto Kenton-Galion Road, and motorists traveling westbound on SR 309. Madden opined to a reasonable degree of engineering certainty that a yield sign on eastbound SR 309 was required to eliminate the hazard at the intersection. Madden also opined that lack of adequate and required signage to control two crossing lanes of traffic was a proximate cause of the accident. Madden suggested the use of chevrons and advance turn markers in addition to a yield sign for eastbound traffic on SR 309.

{¶ 10} Plaintiff asserts that defendant failed to place a square, black and white route marker at the intersection to warn Woodruff that the main road turned to the right and that she would have to make a left turn to access Kenton-Galion Road. 2Q-2 of the Manual states as follows:

{¶ 11} "2Q-2 General Location

{¶ 12} "Route markers shall be erected in accordance with the general requirements for signs (Sec. 2E). Route Markers are normally required at the following locations:

{¶ 13} "(a) Right angle intersections.

{¶ 14} "(b) All intersections where the route turns.

{¶ 15} "(c) All irregular intersections such as "T" or "Y" intersections.

{¶ 16} "(d) All intersections where the type of roadway surface changes.

{¶ 17} "****."

{¶ 18} Plaintiff also asserts that defendant failed to place a black and white advance turn marker ahead of the intersection with an arrow pointing in the direction of the curve, to show that the main road curved to the right. Section 2Q-28 of the Manual states as follows:

{¶ 19} “2Q-28 Advance Turn Markers

{¶ 20} “***

{¶ 21} “Advance Turn Markers shall be used with the appropriate route marker to form a route turn assembly.

{¶ 22} “This assembly shall be used on a numbered route in advance of an intersection to indicate a turn or change in direction of that route at the intersection and may be erected in advance of a turn which must be made to follow an indicated route. ***.

{¶ 23} “Route turn assemblies may be omitted where the character of the roadway clearly indicates the course of the route or routes.”

{¶ 24} Trooper Nicholas Malo testified that he had investigated the accident and that the weather conditions were clear and dry that morning. Malo stated that in addition to the right curve warning sign, both a yellow center line and a solid white edge line delineated the curve on SR 309, and that raised pavement markings (reflectors) were located along the center line of the curve. In addition, Malo stated that a sign that read “Killdeer Plains” (referring to a state waterfowl refuge) with an arrow pointing left in the direction of Kenton-Galion Road was located directly before the intersection.

{¶ 25} David Poling, a civil engineer, testified that he was the design manager for defendant’s District 6 production department where his duties included designing highway improvement projects, signage and roadways. Poling testified that the intersection of SR 309 and Kenton-Galion Road was designed in 1932. Poling explained that current design standards aim for a 70 degree or greater intersecting angle, but that Kenton-Galion Road intersects SR 309 at approximately a 30-degree angle.

{¶ 26} David Holstein, defendant’s expert, testified that he worked as a civil engineer for defendant; that his office published the Manual; and, that his duties included implementing design standards and specifications for signage in central Ohio. Holstein opined to a reasonable degree of engineering certainty that the intersection was “signed” in accordance with the Manual. Holstein further opined that no stop signs or yield signs were required for that section of SR 309 because SR 309 was a through highway; that the Manual did not require the use of an advance turn marker at the

intersection because there was a curve in the roadway, not a turn in the direction of the roadway; and that the Manual did not require any additional signage at the intersection.

{¶ 27} The sections of the Manual that address the design and application of traffic control devices use the words “shall,” “should,” and “may” to describe specific conditions concerning these devices. The use of the word ‘shall’ indicates a mandatory requirement, whereas the use of the word ‘should’ is merely advisory but not mandatory, and ‘may’ indicates a permissive condition. *Kocur v. Ohio Dept. of Transp.* (1993), 63 Ohio Misc.2d 342, 347.

{¶ 28} Based upon the evidence presented at trial, including photographs and videotapes of the intersection, the court finds that Holstein’s testimony was more persuasive than Madden’s testimony. Based upon Holstein’s testimony the court finds that the intersection was not a “Y” intersection. Therefore, the court finds that plaintiff has failed to prove that defendant did not comply with section 2Q-2 of the Manual.

{¶ 29} The court further finds that because SR 309 was a through highway with a curve and because the curve did not constitute a “turn or change in direction” of SR 309, advance turn markers were not required.

{¶ 30} Furthermore, section 2Q-28 of the Manual states that route turn assemblies may be omitted where the character of the roadway clearly indicates the course of the route. The court finds that the land surrounding the curve was flat; that there were no sight obstructions; and, that the pavement markings, including the center lines, edge lines, and reflectors clearly showed that the main route curved to the right. Therefore, the court finds that route turn assemblies were not required by the Manual at this intersection.

{¶ 31} In addition, although plaintiff’s expert opined that a yield sign should have been placed on eastbound SR 309, plaintiff points to no language in the Manual mandating the use of a yield sign at the intersection. Indeed, section 2H-4 of the Manual states that “[y]ield signs should not ordinarily be placed against the major flow of traffic at an intersection.” In sum, the court finds that plaintiff has failed to prove that defendant failed to comply with any mandatory requirements of the Manual.

{¶ 32} Plaintiff also contends that defendant was negligent because it had not conducted an engineering study of the intersection since 1932. However, plaintiff points to no provision in the Manual that would require defendant to conduct such an updated study.

{¶ 33} Lastly, the court finds that any lack of discretionary signage was not a proximate cause of the accident. Rather, the court finds that the failure of Angel Woodruff to yield to oncoming traffic while turning left was the sole proximate cause of the accident.

{¶ 34} R.C. 4511.42 states as follows:

{¶ 35} “Right of way when turning left.

{¶ 36} “The operator of a vehicle, streetcar, or trackless trolley intending to turn to the left within an intersection or into an alley, private road, or driveway *shall yield the right of way* to any vehicle, streetcar, or trackless trolley approaching from the opposite direction, whenever the approaching vehicle, streetcar, or trackless trolley is within the intersection or so close to the intersection, alley, private road, or driveway as to constitute an immediate hazard.” (Emphasis added.)

{¶ 37} The court finds that Woodruff’s failure to obey basic rules of traffic was the sole proximate cause of the accident. For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence and accordingly, judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

VASILIIY GALAY, Admr. :

Plaintiff :

v. :

DEPARTMENT OF TRANSPORTATION :

Defendant :

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CASE NO. 2003-05844
Judge Joseph T. Clark

JUDGMENT ENTRY

{¶ 38} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

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