

[Cite as *Truskolaski v. Ohio Dept. of Transp.*, 2005-Ohio-731.]

IN THE COURT OF CLAIMS OF OHIO

MITCHELL TRUSKOLASKI, et al. :
Plaintiffs : CASE NO. 2003-06867
v. : Judge J. Warren Bettis
OHIO DEPARTMENT OF :
TRANSPORTATION, et al. : DECISION
Defendants :
: : : : : : : : : : : : : : : :

{¶ 1} Plaintiffs brought this action against defendants alleging claims of negligence and loss of consortium arising out of a motor vehicle collision involving a salt truck driven by Brett Wirick, an employee of defendant, Ohio Department of Transportation (ODOT) and a semi-trailer operated by LaDonna Truskolaski. The case proceeded to trial on the issues of liability and damages.

{¶ 2} The collision occurred at approximately 2:00 a.m. on January 18, 2000, on Interstate 71 (I-71) southbound, near exit 165 in Richland County, Ohio. The court notes that I-71 is a major closed-access expressway with two, and at times three, southbound and northbound lanes separated by a grass-covered median. Prior to exit 165, I-71 southbound crests a hilly area and then begins a gradual descent.

{¶ 3} Plaintiff¹ testified that she had been driving in the right driving lane of the two southbound lanes prior to reaching

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For the purposes of this decision, "plaintiff" shall refer to LaDonna Truskolaski.

exit 165. According to plaintiff, it was snowing, the roads were wet, and there was light snow covering the ground. Plaintiff stated that she had been traveling on I-71 for several miles and that she had noticed her speed registered at approximately 52 miles per hour (mph) when she was climbing the hill. Plaintiff related that as her vehicle crested the hill, she noticed flashing lights from a salt truck ahead in the left lane. Plaintiff recalled that as she continued on, the salt truck suddenly pulled into her lane without warning. According to plaintiff, she immediately applied the brakes but she was unable to stop before the front of her vehicle collided with the tailgate area of the salt truck. Mitchell Truskolaski, who was her passenger, testified that he was sleeping in the cab at the time of the collision.

{¶ 4} Plaintiff recalled that there was little or no traffic in the area other than the two vehicles. Plaintiff acknowledged that she routinely allowed her small dogs to lay on her lap or shoulder, unrestrained, while she drove. According to plaintiff, she was well-rested and alert prior to the accident. Plaintiff contended that Wirick entered the southbound lanes from an unmarked, unpaved median crossover; that he traveled in the left lane for a short distance; and that he then abruptly made an improper lane change into her path in the right lane. Plaintiff further speculated that Wirick was attempting to access exit 165 either to take a break at a local restaurant or to return to the ODOT garage. Plaintiff insisted that the ODOT truck entered her path suddenly and that she was unable to avoid colliding with the right rear of the salt truck.

{¶ 5} Defendant maintains that its salt truck drivers always travel in the right lane while laying salt inasmuch as the spinner

device which spews the salt from the truck bed is located in the rear on the driver's side and is designed to spray salt over both lanes. According to defendant, the roadway is raised slightly at the center of the two lanes and thereupon angles slightly downward so that when salt is released, it spreads in all directions such that the entire roadway surface is treated.

{¶ 6} Lance McGinty, an employee of ODOT who was spreading salt on the ramps to northbound I-71 at the time of the accident, testified that he had spoken with Wirick over the radio a few minutes before the collision occurred and that they had no plans to leave the highway to meet for a break. In McGinty's opinion, Wirick would not have attempted to exit the interstate at exit 165 inasmuch as he had only a few more miles of roadway to cover before reaching the end of his assigned route. He testified that he had never known Wirick to abruptly leave his route or to use an unpaved crossover during normal salting operations. He also stated that the drivers usually travel in the right lane and drop the load of salt over the centerline. He testified that the speed of the trucks when engaged in spreading salt averages approximately 25-35 mph.

{¶ 7} Brett Wirick testified that he had no recall of the accident or the immediate aftermath. Trooper Belcher, who was the first patrol officer to arrive on the scene, testified that he did not take statements from either of the parties at the scene. He further stated that in his experience, ODOT trucks did not normally travel in the left lane while spreading salt and that he had never witnessed an ODOT truck use an unpaved median crossover. He also conveyed that a significant amount of the salt load had dumped onto the highway during or immediately after the collision.

{¶ 8} The parties presented testimony from experts who analyzed the information available about the collision. Plaintiffs' expert, Dr. Bernard Richards, testified that he has a Bachelor's degree in physics, as well as a Master's degree and a Ph.D., and that he has taught physics classes at Kent State University for several years. Dr. Richards stated that he had traveled in 2000 to the accident site and he used the diagrams on the traffic crash report to ascertain the exact locations of the vehicles at their final resting point following the collision. According to Dr. Richards, it was his expert opinion that the salt truck crossed from the left lane into the right lane prior to the collision and that such action compromised plaintiff's assured clear distance ahead. Dr. Richards asserted that the path of the salt truck after impact was nearly a 90 degree rotation to the left. Dr. Richards opined that, in order for the truck to travel in this manner, it must have been only partially in the right lane at impact and he speculated that the ODOT driver started into the right lane and then turned the steering wheel sharply to the left when he realized plaintiff's vehicle was about to collide with the salt truck. On cross-examination, Dr. Richards admitted that he is not recognized as an expert in accident reconstruction, nor has he worked for law enforcement performing accident investigations.

{¶ 9} Defendant presented testimony from Henry Lipian, who is an expert in traffic accident reconstruction. Mr. Lipian opined that the proximate cause of the accident was plaintiff's failure to keep an assured clear distance ahead. Lipian further opined that the ODOT vehicle was in the right lane heading southbound prior to the accident. Lipian based his opinion, in part, on the fact that the salt dumped on the roadway begins in the right lane at the point

where the vehicles disengaged. If plaintiff's version of events were correct -- that the ODOT vehicle was only partially into the right lane at impact -- then, according to Lipian, the salt truck would have rotated clockwise and traveled off the right berm, not across the median, and the load of salt released upon impact would have been located in the left lane. Lipian also opined that, even assuming plaintiff's alternate theory to be that Wirick perceived the impending collision and turned the steering wheel sharply to the left immediately prior to impact, the truck bed would have broken loose and would have been propelled clockwise off the right side of the roadway. Lipian further opined that plaintiff's vehicle was traveling at an unsafe speed, that it was traveling too fast for plaintiff to recognize and react to the slower-moving vehicle.

{¶ 10} In order for plaintiffs to prevail on their claim of negligence, they must prove by a preponderance of the evidence that defendant owed them 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. Generally, with regard to the operation of motor vehicles, negligence is the failure to exercise ordinary care or the failure to perform an act required by law. 8 Ohio Jurisprudence 3d (1978) Automobiles and Other Vehicles, Section 448.

{¶ 11} Because of the differing accounts of how the accident occurred and the absence of corroborating statements from any eyewitnesses, the determination of whether defendant breached a duty owed to plaintiff necessarily turns upon witness credibility. "In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner

of testifying; the reasonableness of the testimony; the opportunity he had to see, hear, and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 12} Applying these criteria to the testimony presented herein, the court finds that plaintiff's description of the events was not credible. Specifically, the court does not find it plausible that the salt truck would have traveled over an unpaved crossover as suggested by plaintiff, nor is the court persuaded that the salt truck then emerged from the median area and turned into the left lane of travel. Employees of defendant testified, quite credibly, that ODOT's salt trucks regularly travel in the right-hand lane in order that the salt may be distributed over both lanes of travel. McGinty's testimony that plaintiff was near the end of his usual route was also credible, and places serious doubt upon plaintiff's theory that in order to take a break, Wirick was attempting to cross two lanes of travel and exit from I-71 immediately prior to the accident. The court further finds that the remainder of the load of salt was dumped initially into the right lane and followed the truck's trajectory to the left. This fact supports defendant's position that the salt truck was traveling in the right lane prior to impact.

{¶ 13} Upon review of all the evidence adduced at trial, the court finds that plaintiffs have failed to prove by a preponderance of sufficient, credible evidence that ODOT was negligent. The court finds that, in all probability, plaintiff was traveling too

fast for the conditions when she crested the hill, that she failed to appreciate the danger inherent in approaching the slow-moving vehicle, and that she did not react in such a manner as to maintain an assured clear distance ahead.

{¶ 14} R.C. 4511.21(A) states as follows:

{¶ 15} "(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead." Furthermore, the common law of Ohio imposes a duty of reasonable care upon motorists that includes the responsibility to observe the environment in which one is driving. See, e.g., *Hubner v. Sigall* (1988), 47 Ohio App.3d 15, at 17.

{¶ 16} To establish a violation of R.C. 4511.21(A), the evidence must show that a driver collided with an object that (1) was ahead of him in his path of travel; (2) was stationary or moving in the same direction as the driver; (3) did not suddenly appear in the driver's path; and (4) was reasonably discernible. *Blair v. Goff-Kirby Co.* (1976), 49 Ohio St.2d 5, 7.

{¶ 17} The Supreme Court of Ohio has set forth the sudden emergency doctrine, as follows: "This exception states that a driver does not violate the statute where the assured clear distance ahead is, without his fault, suddenly cut down or lessened by the entrance into his path of an obstruction which renders him unable, in the exercise of reasonable care, to avoid a collision. *Erdman v. Mestrovich* (1951), 155 Ohio St. 85 ***." *Shinaver v.*

Szymanski (1984), 14 Ohio St.3d 51, 54; see, also, *Millard v. CSX Transp., Inc.* (Feb. 10, 1998), Franklin App. No. 97APE05-717.

{¶ 18} According to plaintiff's own testimony, the salt truck's flashers were engaged and the vehicle was readily discernible. Based on the evidence and testimony presented, the court finds it more likely that the salt truck was traveling in the right lane ahead of plaintiff's vehicle in a southbound direction prior to the time when plaintiff's vehicle crested the hill, and that plaintiff was driving her vehicle at a speed that was unreasonable and improper under the circumstances.

{¶ 19} The court thus concludes that there was no sudden emergency presented and that plaintiff's negligent driving was the sole proximate cause of the accident. Furthermore, in the view of the court, plaintiff's conduct in attempting to operate a tractor-trailer while allowing two unrestrained dogs to ride with her, one on her lap and the other on her shoulder, was at a minimum negligent if not reckless. For the foregoing reasons, the court finds plaintiffs cannot prevail on any of their causes of action, accordingly, judgment shall be rendered in favor of defendants.

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	:	<u>JUDGMENT ENTRY</u>
OHIO DEPARTMENT OF	:	
TRANSPORTATION, et al.	:	
	:	

Defendants

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

J. WARREN BETTIS
Judge

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JUDGMENT ENTRY

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