[Cite as *Carollo v. Bowling Green State Univ.*, 2005-Ohio-831.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH CAROLLO	:	
Plaintiff	:	
v.	:	CASE NO. 2004-05961-AD
BOWLING GREEN STATE UNIVERSITY	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On December 1, 2004, this court issued an entry staying proceedings in this matter pending plaintiff filing information concerning whether or not this claim was submitted to the state's liability insurance as provided in R.C. 2743.16(B). On January 14, 2005, plaintiff submitted a letter indicating a claim had been submitted to the state's liability insurance carrier, St. Paul Fire and Marine Insurance Company. However, the claim had been rejected. Accordingly, the stay is now lifted.

{¶ 2} Plaintiff, Joseph Carollo, asserts on May 7, 2004, his son Shane Talkington was driving plaintiff's vehicle westbound in parking lot A when Kerry Taylor, an employee of defendant, was operating a lawn mower northbound in the parking lot and struck the front driver's side of the plaintiff's vehicle. Plaintiff's son asserts Mr. Taylor admitted fault for the accident and said defendant would take care of the damage to plaintiff's vehicle. The police were contacted and came to the scene of the accident. A police report was filed which stated in pertinent part:

{¶ 3} "Responded to BGSU on a call of a private property crash between parking lots A & B. Upon arrival it was found that Shane Talkington was driving a 1998 Saturn westbound in parking lot A. Kerry Taylor was driving a 2004 ventrac lawn mower northbound

between parking lots A & B and struck the Saturn."

{¶ 4} Due to the fact that the accident occurred on private property, there was no additional investigation of the incident and no traffic ticket was issued. Plaintiff asserts defendant's employee was negligent and defendant should be responsible for the repair of his vehicle which amounted to $1,615.82. Plaintiff submitted the filing fee with the complaint.

{¶ 5} Defendant submitted an investigation report wherein it contended the accident happened as follows:

{¶ 6} "On May 7, 2004, Plaintiff's vehicle was heading north and Defendant's vehicle was heading east in Defendant's Firelands campus parking Lot A and Lot B (see Attachment A, Diagram Sheet dated 6-22-04). Defendant's vehicle was located within the center road between Lot A and Lot B. Plaintiff's vehicle was located in the second parking aisle of Lot A and was traveling from Lot A to Lot B. The second parking aisle is perpendicular to the center road. Defendant's vehicle was located within the right hand lane of the center road as the vehicle approached parking aisle two. As Defendant's vehicle approached aisle two, the Plaintiff's vehicle approached the center road from the South. The vehicles collided."

{¶ 7} Defendant asserts since the accident occurred on private property traffic laws do not apply and the standard that should be used is the common-law negligence standard of ordinary care. Defendant contended plaintiff's vehicle's operator failed to exercise reasonable care under the circumstances. Defendant asserts plaintiff's son's operation of his vehicle fell below the standard of care based on the following:

{¶ 8} "Plaintiff's vehicle was traveling North in Lot A's parking aisle two toward Lot B. Simultaneously, Defendant's

vehicle/equipment was located in the right hand lane of the center road between Lot A and Lot B traveling East. As Defendant's vehicle/equipment approached parking aisle two, the right hand row of parking aisle two was completely full of parked cars. Plaintiff's vehicle approached the center road and was not located within the right hand lane of parking aisle two, rather the Plaintiff's vehicle was located within the center of the two lanes of the parking aisle. The location of Plaintiffs vehicle impaired Defendant operator's ability to locate Plaintiff's vehicle in light of the row of parked cars. On the contrary, if Plaintiff's vehicle was located in the right lane of parking aisle two versus the center lane, Defendant's operator and Plaintiff's operator's visibility would not have been impaired by the row of parked cars. Therefore, Plaintiff's operator was not exercising reasonable care in traveling in the center of parking aisle two versus the right hand lane.

{¶ 9} "Additionally, the collision between the vehicles occurred in the middle of the intersection between parking aisle two and the center road, but the Plaintiff's vehicle ended up approximately 3-5 car widths away from the point of impact. Defendant's vehicle/equipment operates at approximately eight (8) miles per hour at full throttle. The speeding limit for the entire campus, including parking lots, is fifteen (15) miles per hour. If the collision caused Plaintiff's vehicle to be pushed approximately 3-5 car widths from the point of impact, it appears that the Plaintiff's operator failed to exercise reasonable care in determining the appropriate speed to travel from Lot A to Lot B."

{¶ 10} Defendant contends based on the evidence, plaintiff has failed to prove, by a preponderance of the evidence, that defendant failed to exercise ordinary care under the circumstances.

{¶ 11} Plaintiff filed a response to defendant's investigation report accompanied by an affidavit from plaintiff's son, Shane Talkington. Plaintiff denied that Mr. Talkington operated the vehicle in the center of the lane, but rather drove in the right hand lane of the aisle and at all times operated the vehicle within the speed limit. Plaintiff contends the operator of the lawn mower admitted fault and such fact was indicated on the police report. Plaintiff denies his vehicle was pushed 3-5 car lengths by the impact of the collision but contends it was moved only a few feet. Plaintiff contends the allegations contained in the investigation report are false with regard to how the accident happened and fault rests solely with defendant's agent. Shane Talkington's affidavit attached to the investigation report conforms to all the points made in the response to the investigation report and further asserts the police officer at the scene acknowledged that the accident was the lawn mower operator's fault.

{¶ 12} The file does not contain statements from the lawn mower operator or the police officer in question.

{¶ 13} It appears Shane Talkington was on defendant's premise as a business invitee. Accordingly, defendant owed plaintiff's son a duty "to exercise ordinary and reasonable care for his safety and protection." See *Cassano v. Antenan Stewart, Inc.* (1993), 87 Ohio App. 3d 7, 9; 61 N.E. 2d 826 quoting *Jackson v. Kings Island* (1979), 58 Ohio St. 2d 357, 359, 390 N.E. 2d 810, and *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718, 722, 158 N.E. 174.

{¶ 14} R.C. 4511.01(EE) defines a roadway as, "that portion of a highway improved, designated, or ordinarily used for vehicular

travel." Under R.C. 4511.01(BB), a "street" or "highway" empasses, "the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel." Parking lots, whether publicly or privately owned, do not appear to fall within that definition.

{¶ 15} In fact, parking lots and private drive ways are routinely exempted from the rules that govern the operation of motor vehicles on roads, streets and highways. See, e.g., *Buell v. Brunner* (1993), 10 Ohio App. 3d 41(R.C. 4511.38, which requires the operator of a vehicle attempting to travel in reverse to exercise vigilance not to injure persons or property does not apply to vehicle operation in a parking area); *State v. Root* (1937), 132 Ohio St. 229 (a driveway on the grounds of a state mental hospital is not a road or highway for the purposes of convicting the driver of vehicular manslaughter); and *State v. Benshoff* (March 21, 1990), 9th Dist. No. 2495 (R.C. 4511.22(A) making it an offense to impede or block the normal movement of traffic, does not apply to a vehicle's operation in a parking area).

{¶ 16} Accordingly, the standard to be applied in this case is the failure to exercise ordinary care to avoid injury to others. *McDonald v. Lanius* (Oct. 28, 1993), Marion App. No. 9-93-23, quoting, 7 Ohio Jurisprudence 3d (1978) 483-484, Automobiles and Other Vehicles, Section 12. Ordinary care is a degree of care that an ordinarily reasonable and prudent person exercises, or is accustomed to exercising under the same or similar circumstances. *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318; 544 N.E. 2d 265.

{¶ 17} A review of the versions of the events supplied by both plaintiff and defendant reveal the following facts are undisputed. Plaintiff's vehicle was being operated in defendant's parking lot.

The vehicle was traveling toward a center aisle of the lot between aisles of parked vehicles. Vehicles were parked on both sides of the parking area as plaintiff's vehicle proceeded to the center aisle. The collision took place in the center aisle with defendant's lawn mower striking the front driver's side of plaintiff's vehicle. Both parties disagree on the following facts. Defendant contends plaintiff was exceeding the posted speed limit of 15 miles per hour, while plaintiff contends the operator of his vehicle was not. Defendant contends plaintiff's vehicle was being operated in the center of the aisle while plaintiff asserts it was being operated in the right hand lane of the aisle. Plaintiff operator stated defendant's agent admitted fault for the accident, however defendant does not acknowledge an admission was made. Plaintiff asserts the police officer at the scene assigned guilt to defendant's agent while defendant related that the officer considered it a "no fault accident."

{¶ 18} "The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus.

{¶ 19} From a review of all the evidence presented, this court finds plaintiff's vehicle operator failed to slow down and observe if other traffic was traveling down the center aisle of the parking lot. It was clear that vehicles were parked on both sides of the aisle and it could be reasonably foreseen that vehicular traffic could be traveling down the center aisle. Plaintiff's operator's negligence in not slowing down or stopping to observe traffic moving down the center aisle of the parking lot was the proximate cause of the accident. Defendant's agent while apparently operating the lawn mowing at top speed, eight miles an hour, did not have sufficient time to avoid the collision. Plaintiff has

failed to prove, by a preponderance of the evidence, that defendant's negligence was the proximate cause of the accident. Accordingly, plaintiff's case is denied.

IN THE COURT OF CLAIMS OF OHIO

JOSEPH CAROLLO	:	
Plaintiff	:	
v.	:	CASE NO. 2004-05961-AD
BOWLING GREEN STATE UNIVERSITY	:	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 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

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