
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TAYLOR HARPER,

Plaintiff,

v.

MICHAEL TVETER,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION IN LIMINE TO EXCLUDE ANY
TESTIMONY ABOUT IDAHO CODE 49-
913

Case No. 2:13-CV-889 TS

District Judge Ted Stewart

This matter is before the Court on Plaintiff's Motion to Exclude Any Testimony About Idaho Code § 49-913. In his Motion, Plaintiff argues that Idaho Code § 49-913 is irrelevant and inapplicable in this matter because the code section applies to moving vehicles as opposed to parked vehicles.

Idaho Code § 49-913 provides,

Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in section 49-903, Idaho Code, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of the load a red or fluorescent orange flag a minim of twelve (12) inches by twelve (12) inches and hung so that the flag is visible to the driver of a vehicle approaching from the rear.¹

¹ Idaho Code Ann. § 49-913.

Plaintiff argues that the statutory language requiring flags be hung so as to be “visible to the driver of a vehicle approaching from the rear”² indicates that the section applies to moving vehicles rather than parked vehicles. The Court disagrees with Plaintiff’s reading of the code section.

The language specifies that “[w]henver the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of the vehicle, there shall be displayed . . . a red light or lantern”³ The code section makes no mention as to whether the requirement applies to moving or parked vehicles, only that the flag be “visible to the driver of a vehicle approaching from the rear.”⁴ This language does not preclude applicability to parked vehicles because the driver of a moving vehicle may approach the rear of both moving and parked vehicles with an extended load and require the same cautionary notice.

The Court will deny Plaintiff’s Motion and allow reference to Idaho Code § 49-913. The Court notes that a non-violation of Idaho Code § 49-913 is not dispositive of the issue of negligence.

It is therefore

ORDERED that Plaintiff’s Motion in Limine No. 9 (Docket No. 76) is DENIED.

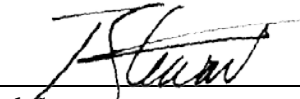
² *Id.*

³ *Id.*

⁴ *Id.*

DATED this 27th day of August, 2015.

BY THE COURT:



Ted Stewart
United States District Judge