SUPREME COURT OF LOUISIANA

No. 98-C-2378

PATRICIA DESHOTEL CORMIER, ET AL

versus

MICKEY L. COMEAUX, ET AL

consolidated with

MICKEY LOUIS COMEAUX, ET AL

versus

STATE OF LOUISIANA, THROUGH THE DOTD

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF ACADIA

VICTORY, J.[*]

We granted a writ to determine if a highway constructed in 1931 contains unreasonably hazardous defects such that liability should be imposed on the State of Louisiana, through the DOTD (the "DOTD"), for injuries caused to the plaintiffs when their car left the highway and struck the back embankment of a roadside ditch. After reviewing the record and the applicable law, we reverse the ruling of the court of appeal and reinstate the ruling of the trial court, holding that the DOTD is not liable for plaintiffs' injuries.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of December 25, 1991, Patricia Cormier and Patrick Kibodeaux left a bar in Midland, Louisiana, with Mickey Comeaux. Comeaux was driving his Dodge Colt and Kibodeaux was seated in the front bucket passenger seat, with Cormier seated on Kibodeaux's lap, as they proceeded to travel west on U.S.

[*]Marcus, J., not on panel. Rule IV, Part 2, § 3.

Highway 90 on their way to Jennings, Louisiana.

At approximately 3:30 a.m., one mile east of Mermentau, Louisiana, Comeaux, whose blood alcohol level was .14 % at the time of the accident, drove his vehicle off the road at a sharp angle, across the shoulder and an adjacent roadside ditch, and into the back embankment of the ditch. The car rolled over and came to rest in the ditch facing north, 74 feet from where it left the road, with its rear bumper 20 feet from the paved surface of the highway. Cormier and Comeaux were rendered quadriplegics as a result of the accident.

Highway 90 was built in 1931 in accordance with plans and specifications prepared by the Louisiana Department of Highways. It was originally constructed as a two-lane, hard-surface highway with nine-foot-wide travel lanes and six-foot-wide shoulders. Although the plans called for fore slopes of 3:1 in "typical" sections, the plans also show two box culverts, through which a 6 1/2-foot deep ditch ran perpendicular to and under the highway, were placed there when the road was originally built. Comeaux's car left the road 10-12 feet past the box culverts, at a point where the roadside ditch was also 6 1/2 feet deep, in order to connect with and drain the under road ditch.[1]

Between 1952 and 1954, the travel lanes of Highway 90 were widened to twelve feet, which had the effect of reducing the width of the shoulders to three feet, and the road was resurfaced. In 1969, asphalt was laid over the concrete travel lanes on Highway 90. On the plans and specifications for the work, the shoulder width and fore slope were described as "varies."

Accordingly, at the scene of the accident, the shoulders were only three feet wide and a ditch was located parallel to the edge of the shoulder. The fore slope of the 6 1/2-

[1]Attached to this opinion is a copy of plaintiffs' exhibit P 5-A, which is a picture of the area where Comeaux's vehicle left the shoulder and ran into the back embankment of the ditch.

foot deep ditch was 3.8:1 for the first five feet, 2.4:1 for the next five feet and 1.2:1 for the next two feet. Then the side of the ditch dropped vertically 1.5 feet to the bottom of the ditch. The ditch bottom extended 5.7 feet to the beginning of the back slope, which extended 10.5 feet, with a slope of 0.7:1 for the first 2.5 feet, and 1.8:1 for the remainder. Neither the shoulder width nor the ditch slopes met the American Association of State Highway and Transportation Officials ("AASHTO") standards in effect at the time of the accident.

Cormier sued Comeaux and the DOTD and Comeaux sued the DOTD, with both Cormier and Comeaux alleging that the narrow shoulder and steep fore slope and back slope of the ditch were unreasonably hazardous conditions which contributed to the severity of their injuries. After a bench trial, the trial judge found that the accident was caused solely by Comeaux and awarded Cormier and her family damages against him.

The trial court made the following relevant factual findings: (1) that the state was not negligent in Comeaux's leaving the traveled portion of the highway; (2) that Cormier was not negligent; (3) that the danger created by the conditions of the ditch contributed to the severity of the injuries received by plaintiffs; (4) that changing the contours of the shoulder and ditch or the addition of guard rails would have in all probability lessened the impact and trauma; and (5) the fore slope and back slope of the ditch involved are dangerous to a vehicle leaving the traveled portion of the highway for any reason. Finally, in denying plaintiffs' motion for new trial, the trial

judge added:

> Now, here we have - he had been drinking, he was tired.[2] I don't know if – My surmise was that he fell asleep.[3] And look, when he left that paved portion, he went right - - He wasn't one of these fellows that gets off this drop and he wants to come back on.[4] I don't care what they say. At the speed he was traveling he never had reaction time at all to prevent going straight down. And, you see, these cases say a reasonably prudent driver.

The trial court concluded that "the state owed no duty to plaintiffs to remedy or rectify the dangerous and hazardous conditions enumerated."

The court of appeal reversed, crediting expert testimony that "the combination of defects basically guaranteed that a vehicle inadvertently leaving the travel lane of U.S. Highway 90, even at a safe speed, would not recover and would ultimately collide with the back slope of the adjacent ditch." ***Cormier v. Comeaux***, 97-645, 97-646 (La. App. 3 Cir. 7/1/98), 714 So. 2d 943. The court of appeal found that the continuing reconstruction of Highway 90 over the years decreased the margin of safety to the public by narrowing the shoulders without compensating for the now-closer foreslope of the ditch. ***Id.*** The court held that DOTD had a duty to correct the problem, because all that was needed was a proper maintenance program and personnel trained to recognize when a slope needed to be made less severe. ***Id.*** We granted the DOTD's

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[2]Although trial court found that Comeaux had been drinking and probably fell asleep at the wheel, the court of appeal noted that Comeaux had a blood alcohol level of .14%, but then credited "eyewitness testimony [that] was to the effect that his driving was not impaired." 714 So. 2d at 945. Apparently, the court of appeal was relying on the testimony of Cormier, who testified that she watched Comeaux drive for a couple of miles before she fell asleep in the front seat to make sure he was driving safely.

[3]Comeaux and Kibodeaux have no recollection of the accident. Cormier testified that although she was asleep prior to the accident, she felt a jolt and awoke to see Comeaux "fighting with the steering wheel." Expert testimony established that Comeaux had one second to react from the time he left the road to the time he hit the back slope of the ditch. There were no skid marks or marks of any kind that would indicate that Comeaux tried to stop or steer away from the ditch.

[4]In spite of expert testimony which supported the trial court's finding that the Comeaux vehicle left the road at a sharp angle leaving insufficient time for Comeaux to react, the court of appeal found that, based on its own calculations "using appropriate trigometric function, the angle at which the vehicle left the highway was less than seventeen degrees." 714 So. 2d at 948.

writ to consider whether the DOTD is liable in this case. ***Cormier v. Comeaux***, 98-2378 (La. 12/11/98), — So. 2d ---.

DISCUSSION

In ***Stobart v. State Through Dept. of Transp. and Development***, 617 So. 2d 880 (La. 1993), we explained the standard of review the appellate courts must apply when reviewing the trial court's findings of fact:

> A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." ***Rosell v. ESCO***, 549 So. 2d 840 (La. 1989). This court has announced a two-part test for the reversal of a factfinder's determinations:
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> (1) The appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and
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> (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous).
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> *See* ***Mart v. Hill***, 505 So. 2d 1120 (La. 1987).
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> This test dictates that a reviewing court must do more than simply review the record for some evidence which supports or controverts the trial court's finding. ***Id.*** The reviewing court must review the record in its entirety to determine whether the trial court's finding was clearly wrong or manifestly erroneous.
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> Nevertheless, the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *See generally,* ***Cosse v. Allen-Bradley Co.***, 601 So. 2d 1349, 1351 (La. 1992); ***Housley v. Cerise***, 579 So. 2d 973 (La. 1991); ***Sistler v. Liberty Mutual Ins. Co.***, 558 So. 2d 1106, 1112 (La. 1990). Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. ***Rosell v. ESCO***, 549 So. 2d 840 (La. 1989); ***Arceneaux v. Domingue***, 365 So. 2d 1330 (La. 1978).

In order for the DOTD to be held liable, the plaintiff must prove that (1) the DOTD had custody of the thing which caused plaintiffs' damages, (2) the thing was defective because it had a condition which created an unreasonable risk of harm, (3) the DOTD had actual or constructive notice of the defect and failed to take corrective

measures within a reasonable time, and (4) the defect was a cause-in-fact of plaintiffs' injuries. ***Brown v. Louisiana Indem. Co.***, 97-1344 (La. 3/4/98), 707 So. 2d 1240; ***Lee v. State Through Dept. of Transp. and Development***, 97-0350 (La. 10/21/97), 701 So. 2d 676.

The DOTD has a duty to maintain the public highways in a condition that is reasonably safe for persons exercising ordinary care and reasonable prudence. ***Brown***, *supra* at 1242(citing La. R.S. 48:21). This duty extends to the shoulders of highways as well. ***Brown,*** *supra; **Myers**, supra*; ***Rue v. State, Dept. of Highways***, 372 So. 2d 1197 (La. 1979). The highway department's duty to maintain safe shoulders encompasses the foreseeable risk that for any number of reasons, including simple inadvertence, a motorist might find himself traveling on, or partially on, the shoulder. ***Id.*** This duty extends to drivers who are slightly exceeding the speed limit or momentarily inattentive. ***Ledbetter v. State, Through Louisiana Dept. of Transp. and Development***, 502 So. 2d 1383 (La. 1987). As to the area off the shoulder of the road, but within the right of way, DOTD owes a duty to maintain the land in such a condition that it does not present an unreasonable risk of harm to motorists using the adjacent roadway or to others, such as pedestrians, who are using the area in a reasonably prudent manner. ***Oster v. Department of Transp. and Development, State of La.***, 582 So. 2d 1285 (La. 1991) (where off road motorcyclist hit a drainage ditch within DOTD's right of way, DOTD not liable because DOTD has no duty to maintain every inch of property within its control neatly mowed or face the prospect of tort liability). Whether DOTD breached its duty, that is, whether the roadway at the scene of the accident was in an unreasonably dangerous condition, will depend on the facts and circumstances of the case. ***Campbell v. Louisiana Dept. of Transp. & Development***, 94-1052 (La. 1/17/95), 648 So. 2d 898, 901-02.

In our view, the prime issue in this case is whether the road was defective because the back slope created an unreasonable risk of harm. The trial court found that Comeaux probably left the road because he was asleep and that based on his angle of departure and speed, he did not have sufficient reaction time to avoid going into the ditch and hitting the back slope of the ditch. This finding was supported by expert testimony that Comeaux only had one second to react from the time he left the road to the time he hit the back slope and by the lack of any skid or other marks that would indicate that he tried to stop or swerve to avoid hitting the back slope. The trial court properly found that this was not a case where the slope of the ditch prevented Comeaux from reentering the highway because he drove directly into the ditch. The trial court also found that the conditions of the ditch contributed to the severity of the plaintiffs' injuries. This finding is supported by the plaintiffs' expert testimony that the collision with the back slope caused the vehicle to rollover which in turn caused the severe injuries suffered by Comier and Comeaux. Thus, because only the back slope was a substantial factor in causing plaintiffs' injuries, our proper focus is only on the back slope of the ditch.[5]

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[5]As to the causation issue, we recognize that although no defect caused Comeaux to leave the road, the trial court did found that the condition of the ditch contributed to the severity of plaintiffs' injuries. This Court has held that "the failure of [the driver] to maintain control of the vehicle does not relieve DOTD of its duty to keep the highways safe." ***Campbell,*** *supra*. In ***Campbell***, the driver fell asleep and ran off the shoulder of the road at which time the driver awoke, and turned the car to the left to try and get back on the highway before he entered a bridge. The right front tire caught the shoulder causing the car to swerve and he hit the concrete abutment of the bridge, which did not have guardrails. The trial court placed 75% fault with the DOTD and the court of appeal reduced it to 10%. Expert testimony showed that the severity of the accident would have been lessened by 80% had the car hit a guardrail. In addition, of the 15 bridges on that highway, all had been given guardrails during overlay work except the bridge where the accident occurred, despite the fact that the bridge met DOTD criteria for the placement of guardrails during overlay projects. The Court rejected the DOTD's argument that the lack of guardrails did not cause the driver to lose control of his vehicle, holding that "[the driver's] negligence set the course for an accident to happen, but the harm or injuries to the guest passengers in [the driver's] vehicle were a direct result of the impact with the concrete bridge abutment." ***Id.*** at 903.

Although the trial judge found that the ditch conditions were dangerous, then, apparently because he did not find them to be unreasonably dangerous, he found that the state had no duty to rectify these dangerous conditions. Whether a road condition is unreasonably dangerous is a question of fact. ***Ledoux v. State Through Dept. of Transp. and Development***, 98-0024 (La. 9/18/98), 719 So. 2d 43 (trial court finding that the condition of the road and the presence of a tree stump near the shoulder did not present an unreasonably dangerous condition was a finding of fact). Thus, we will review the trial court's finding that the road conditions were dangerous and hazardous, not unreasonably dangerous, under the manifestly erroneous standard enunciated above.

"The unreasonable risk of harm criterion entails a myriad of considerations and cannot be applied mechanically." ***Oster***, *supra* at 1288. "Although courts, including this court, have described the unreasonable risk of harm criterion as requiring the court to balance the likelihood and magnitude of harm against the utility of the thing, the balancing test required by the unreasonable risk of harm criterion does not lend itself well to such neat, mathematical formulations." ***Id.*** at 1289. "In addition to the likelihood and magnitude of the risk and utility of the thing, the interpreter should consider a broad range of social, economic, and moral factors including the cost to the defendant of avoiding the risk and the social utility of the plaintiff's conduct." ***Id.*** "One cannot be protected from all risks." ***Graves v. Page***, 96-2201 (La. 11/7/97), 703 So. 2d 566, 573. "This Court must decide which risks are unreasonable." ***Id.***

In ***Graves,*** we held that keeping the highway right of way clear of vegetation that creates site obstructions was not within the scope of the duty of the DOTD to maintain the roadway and the shoulders of the highway. There, the plaintiff's vehicle was struck by a drunk driver traveling at an excessive speed around a curve in the highway and the plaintiff claimed he did not see the drunk driver because of the existence of vegetation

growing on the inside of the curve. We held that the vegetation did not pose an unreasonable risk of harm nor was it a substantial factor without which this accident would not have happened. In concluding that "[i]t is unreasonable to impose a rule of law that would require DOTD to maintain every tree and shrubbery within its control or face the prospect of tort liability," we reasoned that "[t]he duty to maintain the roadway and shoulder does not encompass the risk that an intoxicated oncoming driver, traveling at a high rate of speed, will cross over into a motorist's lane of travel." ***Id.*** at 574.

The plaintiffs argue that the shoulder and slopes of the ditch were unreasonably hazardous because they did not meet current AASHTO standards. However, the DOTD clearly does not have a duty to bring old highways up to modern AASHTO standards. ***Aucoin v. State Through Dept. of Transp. And Development***, 97-1938 (La. 4/24/98), 97-1967 (La. 4/24/98), 712 So. 2d 62; ***Myers v. State Farm Mut. Auto. Ins. Co.,*** 493 So. 2d 1170 (La. 1986); ***Holloway v. State Through Dept. of Transp. and Development***, 555 So. 2d 1341 (La. 1990). We have held that this duty does not exist unless a new construction or a major reconstruction of the highway has taken place. ***Ledoux***, *supra*. In this case, although the lanes were widened and resurfaced in 1954 and the road was resurfaced in 1969, no major reconstruction was undertaken, as recognized by the court of appeal. Thus, the DOTD had no duty to bring Highway 90 up to current AASHTO standards.

The plaintiffs also argue that liability should be imposed on the DOTD because their maintenance practices actually increased the back slope of the ditch. Although the DOTD's maintenance supervisor testified that generally, in order to clean out ditches, they dug out the ditches, this evidence does not establish that improper maintenance increased the back slope of the ditch at the scene of the accident. There was no

evidence presented as to the original back slope of the ditch at this location. Although the original plans called for a 3:1 fore slope in "typical" sections, the point where Comeaux's vehicle crossed the ditch was not a "typical" section in that the topography mandated a deeper ditch because the ditch connected with and drained a 6 1/2-foot deep ditch which ran perpendicular to and under the road from the time the road was built. The original plans did not indicate the desired slope of the back slopes. The record reflects that the depth of the ditch at the time of the accident was still 6 1/2 feet deep.

Plaintiffs also argue that guardrails should have been installed over the box culverts. Beginning in 1939, AASHTO introduced guidelines which required guard rails at certain points. However, as recognized by the court of appeal, Highway 90 did not undergo any major reconstruction and thus the AASHTO standards regarding guard rails do not apply to Highway 90. In addition, while a guard rail may have lessened the severity of the plaintiffs' injuries, the DOTD's duty to provide a reasonably safe highway does not require the DOTD to take every conceivable measure to prevent injuries. In this case, the surface of the road and shoulder were in good condition, and the roadside ditch was clearly visible to a reasonably prudent driver.

Generally, in other cases such as this one, where no road defect caused the driver to leave the road and the driver hit an object in the DOTD's right of way, the DOTD has been relieved of liability.[6] Two cases involved the same highway, the Greenwell

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[6]Contrary to the facts of this case, in most cases where the DOTD has been found liable for highway defects, liability has been based on a finding that the highway defect itself caused the driver to leave the roadway and have an accident. ***Brown***, *supra* (excessive shoulder slope and excessive rollover on curve was 25% cause of accident, despite fact that driver fell asleep and failed to negotiate the curve; DOTD not liable however for abandoned driveway on shoulder which driver collided with and which caused his car to become airborne); ***Sinitiere v. Lavergne***, 391 So. 2d 821 (La. 1980) (although the DOTD is not the guarantor of the safety of all motorists, DOTD 50% liable because 3-4 inch drop off from road to shoulder caused driver to lose control); ***Ledbetter***, *supra* (lack of warning signs on curve was cause-in-fact of driver running off road); ***Molbert v. Toepfer***, 550 So. 2d 183 (La. 1989) (design of curve and lack of warning and appropriate speed limit resulted in 5% liability of DOTD, despite fact that driver had .13% blood alcohol level); ***Dill v. State, Dept. of***

Springs Road. Just as in the case at bar, the highway was built in the 1930s and the lanes were subsequently widened, leaving a one-to-two-foot shoulder and an adjacent ditch. In ***Myers***, *supra*, the driver swerved off the road to avoid a car and ran into a tree in the ditch that had a fore slope of 2:1. In ***Holloway***, *supra*, the driver left the pavement for unknown reasons and ran into a tree just beyond the back slope of the ditch, 13 feet from the road. In both cases, this Court held that the DOTD had no duty to bring the road up to current standards. In ***Myers***, the Court held that, as in this case, where the travel lanes had been widened which reduced the width of the shoulders, "overall the highway was improved and made more safe for persons traveling on it because the lanes of travel were widened and the surface of the road improved, but the crown of the highway was not brought any closer to roadside objects." 493 So. 2d at 1173. In ***Holloway***, the Court held that the road was not unreasonably dangerous in that there were no defects in the roadway or shoulder, and the roadway was unobstructed with a clearly visible shoulder sloping into a ditch.[7]

Transp. and Development, 545 So. 2d 994 (La. 1989) (curve, which was the site of 72 prior accidents, presented unreasonable risk of harm because narrow lane width and severe degree of curvature were long-standing design conditions compounded by construction and maintenance defects); ***Stobart v. State Through Dept. Of Transp. and Development***, *supra* (bumps and potholes caused driver to leave roadway); ***Hunter v. Department of Transp. and Development of State of La.***, 620 So. 2d 1149 (La. 1993) (narrow median for left hand turns was joint cause of accident, DOTD had duty to bring up to AASHTO standards because highway underwent a major reconstruction).

[7]In the following cases, the DOTD was also relieved of liability. In ***Manasco v. Poplus***, 530 So. 2d 548 (La. 1988), the driver veered onto the shoulder of an old highway to avoid a car making a left-hand turn and his front bumper hit a fire hydrant in the ditch next to the shoulder. The court held that failure to reconstruct the highway to meet modern standards did not establish the existence of a defect. The court also found that the surface of the roadway was in good condition, free from ruts and potholes and there was no abrupt drop-off between the travel lane and the gravel shoulder.

In ***Ledoux***, *supra*, the driver, who had a .14% blood alcohol level, lost control as he approached a turn on an old highway and struck a tree stump seven feet from the edge of the paved roadway and continued across a field where it flipped several times, striking a telephone pole as well as a steel barricade surrounding a gas main. The plaintiff claimed that when the DOTD widened the travel portion of the road, it reduced the clear zone from 19 to 7 feet. Expert testimony was inconsistent as to whether the tree stump caused the car to roll over and the trial court credited the testimony of the DOTD expert who opined that given the driver's speed and trajectory, the car would have rolled over even without hitting the stump. The Third Circuit reversed and this Court reinstated the trial court's ruling.

The plaintiffs argue that this Court's recent decision in ***Aucoin***, *supra*, requires a finding of liability against the DOTD. In ***Aucoin***, the driver swerved off the road to avoid hitting a dog. When she swerved, her car's outer wheels ran outside the white fog line, onto a narrow shoulder approximately one foot wide, and down a steeply sloped ditch. In less than two seconds from the time her wheels first left the road, her car had traveled 123 feet before crashing into a tree that was growing on the back slope of the ditch in DOTD's right of way, 8 1/2 feet from the edge of the fog line. The highway in ***Aucoin*** was the same highway, Greenwell Springs Road, involved in the ***Myers*** and ***Holloway*** cases. The ***Aucoin*** court expressly reaffirmed ***Myers*** and ***Holloway***, but distinguished those cases, noting that by 1990, the "DOTD could not name a more dangerous road given the combination of dangerous conditions." ***Id.*** Justices Marcus and Traylor dissented, asserting that reaffirming the holding in ***Myers*** required a conclusion that the DOTD was not liable for its failure to bring the road up to current standards.

The circumstances in this case are easily distinguishable from those in ***Aucoin***: namely, in this case there was no drop-off shoulder; the shoulder width was three feet, not one foot; the drunk driver ran off the road perhaps because he was asleep and he never tried to get back on the road, making the fore slope irrelevant; there were no DOTD standards applicable to Highway 90 that the DOTD was compelled to meet, such as the 3:1 sloping in ***Aucoin;*** and, the distance from the edge of the shoulder to the back slope was 17 feet, compared with the 8 1/2-foot horizontal clearance in ***Aucoin***.

As we stated in ***Graves***, one cannot be protected from all risks. Undoubtedly, it would be desirable for the DOTD to design roads so that no accidents would ever occur, however, economic realities make such a goal impossible to reach. Thus, we

as a society must determine the lengths we expect the DOTD to go to ensure that our roads are safe. We have expressed this as standard as "reasonably safe for persons exercising ordinary care and reasonable prudence." ***Brown***, *supra*. As we stated in ***Myers***, "many Louisiana roads have narrow shoulders and steep roadside ditches and are lined with trees, culverts, fences, and other objects." 493 So. 2d at 1173. "[I]t would be physically and financially impossible to bring all of the state's roads up to modern standards." ***Id.*** Although we as a society demand that old highways be reasonably safe, the DOTD's duty to maintain old highways does not include the risk that an intoxicated driver will fall asleep and drive off the road at a sharp angle, failing to see a clearly visible roadside obstacle 17 feet from the shoulder, in this case, the back slope of the ditch.

CONCLUSION

The State has no duty to bring old highways up to current safety standards, unless the highway has undergone major reconstruction. Nevertheless, the State has a duty to correct conditions existing on old highways that are unreasonably dangerous. In this case, the DOTD breached no duty owed to plaintiffs given the following factors: (1) the driver was drunk and possibly asleep when he ran off the road; (2) the driver ran off the road at a sharp angle for no apparent reason with no time to react and reenter the highway; (3) Highway 90 was an old highway which has not undergone a major reconstruction since it was built in the 1930s; (4) the roadway itself had no defects; (5) the ditch was 6.5 feet deep when the highway was built and was 6.5 feet deep at the time of the accident; (6) the narrow shoulder and roadside ditch were clearly visible; and (7) there was no evidence that the angle of the back slope was increased from the time of its original design. Thus, we affirm the trial court's finding that the DOTD is not liable in this case. The court of appeal erred in reversing the trial court's finding

that the DOTD owed no duty to plaintiffs to improve the condition of the roadside shoulder and ditch.

DECREE

For the reasons stated herein, we reverse the holding of the court of appeal and reinstate the ruling of the trial court finding that the DOTD is not liable to plaintiffs in this case.

REVERSED.