

[Cite as *Christian v. Ohio Dept. of Transp.*, 2008-Ohio-3640.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHANNES J. CHRISTIAN

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

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Case No. 2002-06545	- 3 -	DECISION
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Case No. 2002-06545

Judge Joseph T. Clark

DECISION

{¶1} Plaintiff brought this action against defendant, Ohio Department of Transportation (ODOT), alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} The following facts have been stipulated by the parties. On July 9, 2001, shortly before 1:00 a.m., plaintiff was traveling eastbound near Springfield, Ohio on Interstate 70. As he was approaching the Plattsburg Road bridge, 15-year-old Jacob McNary threw a large rock from the bridge. The rock crashed through plaintiff's windshield. At the time of the incident, the sides of the bridge consisted of cement parapets; there was no vandal protection fencing (VPF) in place.

{¶3} On August 12, 1986, ODOT's chief engineer of planning and design informed all district deputy directors of Policy 1005.1 regarding the installation of protective fencing on existing bridges, which had been approved by the Federal Highway Administration on July 30, 1985. According to the policy, each county had to determine which bridges were subject to protective fencing. Policy 1005.1 contained a numerical rating system for the evaluation of overpasses throughout the state. The higher the number, the greater the indication of a need for protective fencing. The analysis had to be completed in all 12 ODOT districts, and after the ratings were calculated, the data was submitted to the central office for compilation.

{¶4} Plaintiff alleges that ODOT was negligent in failing to properly evaluate the Plattsburg Road bridge for VPF from 1985-2000, and for not timely installing protective screening on the Plattsburg Road bridge after a policy decision was made to install fencing on overpasses throughout the state. Plaintiff also alleges that ODOT was negligent in failing to erect VPF when the bridge underwent major repairs and renovation in 1994. Plaintiff maintains that if fencing had been installed, it would have prevented the devastating injury that gave rise to this case.

{¶5} Defendant denies liability and contends that the bridge was evaluated and that it did not meet the criteria for VPF to be installed. In addition, defendant maintains that the bridge was also evaluated in 1994 when the bridge was scheduled for rehabilitation and, once again, the bridge was not given a score that supported the need for VPF. Although defendant was unable to locate any documents to verify that the bridge was evaluated, defendant insists that it was not required to maintain data on the

bridges that did not meet the criteria for VPF and that ODOT inspects all of the bridges each year while monitoring conditions as bridges age.

{¶6} Sean Meddles, ODOT's bridge standards engineer, testified that due to limited funding for the project, ODOT's objective was to retrofit every bridge that scored ten or more points, that the point procedure was detailed in ODOT's policy 1005.1, and that subsequently it was contained in the bridge design manual, sections 3.5 and 305. According to the March 1993 version of the bridge design manual section 3.5.2, the following list was to be used as a general guide to ascertain the need for VPF. (Plaintiff's Exhibit 8.)

"INDEX POINTS	JUSTIFICATION ITEM
"2	a. Overpass within an urbanized area of 50,000 or more population
"2	b. Overpass with sidewalks but not in an urbanized area as defined in (a.) ('Sidewalk' does not include safety curbs 2'-3" or less in width.)
"2	c. Overpass which is unlighted.
"2	d. Overpass not a main thoroughfare, i.e., on collectors or local streets.
"2	e. Overpass within one-half mile of another overpass exclusive of pedestrian bridges, having or requiring protection.
"4	f. Overpass within one-half mile of another overpass having previous reports of falling objects.
"4	g. Overpass within one mile of a school, playground or other pedestrian attraction.
"4	h. Bridges over any feature which has a high count of boat, rail, vehicular or pedestrian traffic, or includes damage-sensitive property.

“6 i. Overpass which has had prior reported incident of falling objects.

“10 j. Overpass which is used exclusively by pedestrians.”

{¶7} In versions of the bridge design manual for 1993, 1995, and 2000, the criteria and points values remained unchanged; the manuals listed the following cautionary text: “The list is not to be construed as all inclusive. Other rationale may be used on a case-by-case basis. Similarly, retrofitting of bridges which qualify according to the total index number is not mandatory if adequate justification for not doing so can be furnished.” (Plaintiff’s Exhibits 8, 10, 11.)

{¶8} According to Meddles, the Plattsburg Road bridge was not within an urban area, it had no sidewalks, and it was not within a half-mile of another bridge that was scheduled to be retrofitted or of a bridge having a history of falling or thrown objects. Meddles explained that when he is responsible for evaluating a bridge, he reviews a map, and if the bridge is located outside the corporation limits, then it is not located within an urban area. Meddles testified that he would also consult a map to determine if any pedestrian attractions were in the vicinity. He stated that the area near the bridge in question is mainly comprised of open farmland and that there is not a significant amount of traffic congestion in the area. Indeed, according to Meddles, only three criteria applied to this bridge: c) the overpass was unlighted; d) the overpass was not a main thoroughfare--it was a collector road; and h) the bridge spanned an interstate with a high traffic count. Therefore, Meddles opined that the bridge qualified for a total score of 8 points; c) 2 points, d) 2 points, and h) 4 points under the justification items for VPF.

{¶9} Brad Lightle, the System Assessment Engineer for ODOT’s District 7¹ also testified. He stated that in 1994, the Plattsburg Road bridge underwent rehabilitation and that the project included the type of work that would require the bridge to be evaluated for VPF. Lightle admitted that no documentation had been located to verify

that the bridge was evaluated at that time; however, Lightle testified that if VPF were required, the cost for the materials would have been included in the documents prepared by the contractor, KZF. As there are no costs associated with VPF for the renovations, Lightle opined that the bridge was evaluated in 1994 and that, once again, a score of ten or more was not given. (Plaintiff's Exhibit 9.)

{¶10} Plaintiff argues that the score should include point values for justification item a) inasmuch as the bridge is located in Clark County which has a population over 50,000 and justification item h) because there are nearby attractions including a campground, a high school, and the town of Harmony, Ohio. Conversely, defendant maintains that while the policy does not reference a definition of what constitutes an urbanized area, defendant has discretion to rely on engineering judgment, which includes ascertaining the type of land development nearby as well as whether the bridge is outside corporation limits. Defendant argues that the items listed above by plaintiff do not serve as a significant attraction for pedestrians; defendant notes that the term pedestrian applies to all persons, not merely children or teenagers.

{¶11} "The state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion. However, once the decision has been made to engage in a certain activity or function, the state may be held liable, in the same manner as private parties, for the negligence of the actions of its employees and agents in the performance of such activities with regard to decisions that require a high degree of executive planning and that it should be afforded some discretion with respect to the decisions that are made." *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70.

{¶12} Plaintiff relies on the holding in *Semadeni v. Ohio Dep't of Transp.*, 75 Ohio St.3d 128, 1996-Ohio-199, as authority for his position that ODOT was negligent.

¹Clark County is included in District 7.

In *Semadeni*, the Supreme Court of Ohio held that “[t]he Blair Avenue overpass was one of more than four hundred bridges scoring ten index points or more which were not approved for funding. The Blair Avenue bridge justified a score of twelve index points by ODOT's own criteria, and pursuant to Policy 1005.1, ODOT's agents and employees were under a mandatory duty to complete its fencing within a reasonable time. In a nearly five-year period, ODOT fenced only a small minority of the bridges which it had itself deemed to be in mandatory need of fencing, including the Blair Avenue overpass. Failure to timely implement Policy 1005.1 as to bridges highest in priority undoubtedly resulted in even greater delay in fencing bridges that were further down the list of priority, such as the Blair Avenue bridge. We hold that, pursuant to R.C. 2743.02, ODOT is not immune from plaintiff's claims of liability. We conclude on this record that reasonable minds could only find that ODOT was negligent in failing to timely implement Policy 1005.1, and that its negligence was a proximate cause of Pietro Semadeni's death.”

{¶13} The court emphasizes that, in *Semadeni*, ODOT had already determined that the bridge was in need of fencing; that ODOT had received prior reports of objects being thrown from nearby bridges; and that the Blair Avenue bridge had achieved a score greater than ten, whereas the Plattsburg Road bridge had not. Defendant also asserted that there were other bridges in the vicinity of the Blair Avenue overpass scheduled for VPF. However, no other bridges near the Plattsburg Road bridge were identified as being in need of VPF in the time frame referenced by plaintiff.

{¶14} The purpose of adding VPF was two-fold. The first or primary consideration was pedestrian protection from being blown over the railing during periods of high winds. The second consideration was to prevent objects falling from or being thrown from the overpass. (Plaintiff's Exhibit 8.) Thus, the court finds that it was reasonable for ODOT to prioritize funding for those bridges with sidewalks. Indeed, ODOT explained that the Plattsburg Road bridge did not have sidewalks and that as such it was not considered pedestrian-accessible. Both Meddles and Lightle testified

that the bridge was located in a rural area with few residential areas nearby. Nevertheless, ODOT also had some discretion to add VPF to a bridge if it were determined that a high number of incidents of thrown objects warranted such measure. Prior to plaintiff's trauma, there was no indication that any objects had fallen from or been thrown from the bridge at issue.

{¶15} Upon review of all the testimony and evidence presented, the court is not convinced that the Plattsburg Road bridge should have netted a score that made VPF mandatory prior to plaintiff's incident. Indeed, even after the accident, ODOT evaluated the bridge and did not assess a score of ten or higher. The reality is that the state, of necessity, must allocate resources. The court concludes that defendant did not negligently implement its policy, and that the procedures in place prior to July 9, 2001, did not support a need for VPF on the Plattsburg Road bridge. For the foregoing reasons, the court finds that defendant is not liable to plaintiff and, accordingly, judgment shall be rendered in favor of defendant.



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- 10 -

DECISION

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JUDGMENT ENTRY

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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

cc:

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SJM/cmd
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