

[Cite as *Wieleba-Lehotzky v. Ohio Dept. of Transp., Dist. 7, 2004-Ohio-4129.*]

IN THE COURT OF CLAIMS OF OHIO

LENNIE A. WIELEBA-LEHOTZKY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03918-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 7	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	::::::::::::::::::::

{¶1} On January 18, 2004, at approximately 9:15 a.m., plaintiff, Lennie A. Wieleba-Lehotzky, was traveling east in the far right lane of State Route 725 in Montgomery County. Plaintiff related she drove past the entrance ramp to Interstate 675 onto a private access road. As plaintiff attempted to enter a McDonald's restaurant parking lot located adjacent to the access road she drove over a concrete island road divider, which separated the traveling lanes of the access road. Plaintiff's automobile tire was damaged as a result of striking the concrete island. The island divider was installed and maintained by defendant, Department of Transportation (DOT), see *Clevenger v. Ohio Department of Transportation* (1999), 99-12049-AD. Defendant previously acknowledged the divider was located entirely within the DOT right-of-way.

{¶2} Plaintiff filed this complaint seeking to recover \$196.01, the cost of a replacement tire, plus \$25.00 for filing fee

reimbursement. Plaintiff has alleged she incurred these damages as a proximate cause of negligence on the part of DOT in maintaining the concrete median road divider. Plaintiff explained the concrete median presented a hazardous condition since it was not marked and therefore not "distinctively visible" to traveling motorists using the access road abutting State Route 725. Furthermore, plaintiff claimed multiple incidents involving many motorists had occurred on this access road under circumstances similar to her January 18, 2004 property damage event. Based on these facts, plaintiff contended defendant was negligent in maintaining a latent hazardous condition and this negligence was the sole cause of her property damage.

{¶3} Defendant denied any liability in this matter. Defendant described the concrete island plaintiff's car struck as a "concrete channelizing island that is designed to restrict left-turn movements onto SR 725." Defendant asserted the particular portion of the island which plaintiff's vehicle hit "is not on ODOT Right of Way and is located in the service road between the McDonald's and the BP Gas Station." Defendant implied DOT did not install, maintain, or have any responsibility concerning the concrete island divider on the access road from State Route 725. Defendant seemingly argued DOT is not a proper party defendant in this action, although no evidence has been presented to show DOT relinquished control over the concrete divider to another entity either public or private. Furthermore, defendant contended plaintiff failed to offer sufficient evidence to establish her automotive damage was caused by an act or omission attributable to DOT personnel.

{¶4} After reviewing photographic evidence depicting the roadway and concrete island divider, the trier of fact finds the object plaintiff's car struck was readily discernible to any member

of the traveling public exercising the proper standard of care required to safely operate a motor vehicle. The photographic evidence does not show a hidden hazardous condition.

{¶5} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} Defendant has the duty to keep its roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD. Plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant. In fact, the sole cause of plaintiff's damage was her own negligent driving. Plaintiff has not proven defendant maintained a hidden defect. *Clevenger, supra*.

{¶7} 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

Entry cc:

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DRB/RDK/laa

6/23

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