

[Cite as *Holmes v. Ohio Dept. of Transp.*, 2004-Ohio-4376.]

IN THE COURT OF CLAIMS OF OHIO

PATTY HOLMES :
Plaintiff :
v. : CASE NO. 2004-04051-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} During the morning daylight hours of March 23, 2004, personnel of defendant, Department of Transportation (DOT), were conducting centerline painting operations on State Route 97 in Morrow County. Defendant insisted the centerline painting, which consisted of applying yellow paint along the center of the roadway, was conducted properly and safely in accordance with all requirements mandated for this type of activity. Traffic control for the painting operation involved two vehicles; a paint truck from which yellow paint was applied to the roadway surface, followed by a second truck traveling "no more than 10 mph behind the paint truck." "Wet Paint" signs were placed in view on State Route 97 to warn motorists of the painting operation. Furthermore, according to defendant, the paint used apparently dried within two minutes upon application to the road surface. Defendant asserted adequate precautions were taken to perform the painting operation in a safe manner and to warn all motorists about the activity.

{¶2} At sometime between 10:00 and 11:00 a.m. on March 23, 2004, plaintiff, Patty Holmes, was traveling on State Route 97 in Morrow County, when she approached a line of traffic. Plaintiff stated she slowed down when she neared the line of traffic characterized as "about five or six cars between us and the street painting truck." Plaintiff explained she followed the line of vehicles trailing defendant's painting operation trucks until she exited onto State Route 288. After entering US Route 23, plaintiff pulled into a shopping center parking lot and discovered yellow paint on her car. Plaintiff implied her automobile received paint damage from driving over fresh wet centerline paint on State Route 97. Consequently, plaintiff filed this complaint seeking to recover \$352.85, the cost of removing paint from her vehicle. The requisite material filing fee was paid.

{¶3} Defendant denied any liability in this matter. Defendant asserted adequate warning was given to motorists of the March 23, 2004 painting operation. Defendant denied breaching any duty of care owed to plaintiff in regard to the centerline painting. Defendant asserted plaintiff's act of violating R.C. 4511.17(A)¹ was the sole cause of the property damage in the instant claim.

CONCLUSIONS OF LAW

{¶4} Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the

¹ R.C. 4511.17 states as follows:

"(A) No person, without lawful authority shall do any of the following:
"(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition and is marked by flags, markers, signs, or other devices intended to protect it."

evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶5} Defendant has the duty to maintain its highways 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} R.C. 4511.17(A) states:

{¶7} "No person, without lawful authority, shall do any of the following:

{¶8} "(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition and is marked by flags, markers, signs, or other devices intended to protect it." (Emphasis added.)

{¶9} R.C. 4511.99 states in pertinent part:

{¶10} "Whoever violates provisions of section 4511.01 to 4511.76 of the Revised Code, for which no penalty otherwise is provided in this section is guilty of one of the following:

{¶11} "(A) . . . , a minor misdemeanor . . ."

{¶12} R.C. 2901.02(A) states:

{¶13} "(A) Offenses include . . . minor misdemeanor . . ."

{¶14} R.C. 2901.21(A) (1) and (2) states:

{¶15} "(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

{¶16} "(1) The person's liability is based on conduct which includes either a voluntary act, or an omission to perform an act

or duty that the person is capable of performing;

{¶17}"(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense."

{¶18}R.C. 2901.22(B) states:

{¶19}"(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶20}Contrary, to defendant's contention, the court concludes plaintiff's act of driving over the fresh painted centerline did not constitute a violation of R.C. 4511.17(A). No evidence has been presented to show plaintiff possessed the culpable mental state of knowingly driving on freshly painted road markings. In fact, all evidence indicates plaintiff was unaware of the physical nature of the roadway markings. Therefore, negligence on the part of plaintiff based on a statutory violation is not an issue in this matter.

{¶21}Plaintiff has the burden of proof to show her property damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant's employees. Conversely, evidence has shown plaintiff's own negligent driving by veering onto the painted centerline was the proximate cause of her property damage. Therefore, this claim is denied.

{¶22}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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6/30
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