[Cite as *Reid v. Dept. of Pub. Safety*, 2009-Ohio-4023.]

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

CRYSTAL R. REID

Plaintiff

v.

DEPARTMENT OF PUBLIC SAFETY, et al.

Defendants

Case No. 2004-10159

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiff brought this action alleging negligence, negligent infliction of emotional distress, and negligent entrustment of a vehicle. The case was tried on the issues of both liability and damages.

{¶ 2} This case arises as a result of a four-vehicle accident that occurred when plaintiff was attempting to exit southbound Interstate 75 (I-75) and merge onto westbound Interstate 70 (I-70) near Vandalia, Ohio.

{¶ 3} The pertinent facts are not disputed. As plaintiff drove onto the ramp she looked to her left to determine whether it was safe to merge onto I-70. There was heavy traffic in the left lane of I-70; however, there was a sufficient break in traffic in the right lane to allow plaintiff to merge safely. Plaintiff continued accelerating up the ramp and prepared to merge but struck the vehicle immediately in front of her own vehicle. Plaintiff then stopped her vehicle and was struck by the vehicle directly behind; that vehicle was, in turn, struck by a fourth vehicle. The latter two vehicles were driven by

defendants' employees, State Highway Patrol Trooper Robert Hoelscher in the third vehicle, and Trooper Anik Rogers in the fourth vehicle. Troopers Hoelscher and Rogers were employed at defendants' Piqua patrol post and were working a plainclothes detail, neither was patrolling the interstate at the time.

{¶ 4} A supervisor from defendants' Dayton patrol post, Sergeant Anthony Bradshaw, was dispatched to the scene to investigate. (Plaintiff's Exhibit 1.) Sergeant Bradshaw noted that the roadway was dry and that atmospheric conditions were clear when the accident occurred at approximately 12:30 in the afternoon. None of the air bags in any of the vehicles deployed. Each of the drivers was wearing a seatbelt and no one involved claimed to be seriously injured or in need of emergency medical attention. Plaintiff did advise Sergeant Bradshaw that she had struck her head on the steering wheel when Hoelscher's vehicle collided with hers and that she had a "scratch" on her neck from the shoulder strap of her seatbelt. After returning home from the accident, plaintiff visited the emergency room at Miami Valley Hospital where she was diagnosed with cervical muscle strain and a left clavicle contusion. (Defendants' Exhibit A.) Plaintiff was also six weeks pregnant at the time, and, although she subsequently suffered a miscarriage, there is no allegation that such occurrence was related to the accident. Rogers, who was six months pregnant at the time, went to the emergency room as a precautionary measure after the accident. All of the vehicles sustained some degree of damage; plaintiff's vehicle was the only one that was rendered inoperable and had to be towed from the scene. As a result of Sergeant Bradshaw's investigation, plaintiff, Hoelscher, and Rogers were each cited for violation of R.C. 4511.21(A), failure to maintain an assured clear distance ahead.[1]

{¶ 5} Plaintiff is seeking damages for physical and emotional injury, property damage, work loss, and incidental expenses. There is no evidence or allegation that the collision between Rogers and Hoelscher resulted in any further impact with plaintiff's vehicle or any additional physical injury to her. Rather, plaintiff contends that Hoelscher

[1]R.C. 4511.21(A) provides in pertinent part that: "[n]o person shall operate a motor vehicle, * * * in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead."

was negligent per se in violating the assured-clear-distance-ahead statute and that his negligence was the sole proximate cause of her injuries.[2]

{¶ 6} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendants owed her a duty, that defendants' acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 7} It is axiomatic that a violation of the assured-clear-distance-ahead statute constitutes negligence per se. *Pond v. Leslein*, 72 Ohio St.3d 50, 53, 1995-Ohio-193. Thus, as a matter of law, Hoelscher breached a duty that he owed to plaintiff. Nonetheless, plaintiff must also prove that Hoelscher's negligence was the proximate cause of her injuries. The fact that Hoelscher was cited for the violation does not automatically establish that his conduct was the sole proximate cause of plaintiff's injuries, nor does it preclude evidence as to plaintiff's own negligence as a causal factor in the collision. *Kromenacker v. Blystone* (1987), 43 Ohio App.3d 126, 131.

{¶ 8} In her statement to Sergeant Bradshaw at the scene of the accident, and in her testimony at trial, plaintiff acknowledged that Hoelscher's collision with her vehicle would not have occurred if she had not collided with the vehicle in front of her. She alleged that the vehicle in front of hers "stopped dead" prior to the collision; however, even assuming the truth of that contention, plaintiff is not relieved of all fault. In addition to the statutory requirement that she maintain an assured clear distance ahead of her vehicle, the common law of Ohio imposes a duty of reasonable care upon all motorists that includes the responsibility "to observe the environment in which they drive, not only in front of their vehicle, but to the sides and rear as the circumstances may warrant." *Hubner v. Sigall* (1988), 47 Ohio App.3d 15, 17, citing *State v. Ward* (1957), 105 Ohio App. 1; *Scott v. Marshall* (1951), 90 Ohio App. 347, 365.

{¶ 9} There is no dispute that the accident occurred on a clear, sunny day and that the vehicle in front of plaintiff, which was driven by Jumpei Miyakawa, was readily

---

[2] Inasmuch as plaintiff did not present any evidence with regard to her claims of negligent infliction of emotional distress and negligent entrustment of a vehicle, judgment shall be rendered in favor of defendant as to those claims.

discernible. Plaintiff acknowledged that she observed that the vehicle's brake lights were on. Miyakawa stated that he was preparing to merge when he looked in his rearview mirror and saw that plaintiff's vehicle was "close to [his]" and that he "was close to traffic and [plaintiff] couldn't stop and that is when she bumped me." He denied that he came to a sudden complete stop, but stated that he was "pretty close" to being stopped when he observed plaintiff's vehicle. Hoelscher stated that he was on the merge ramp when he heard squealing tires and observed that plaintiff's vehicle, which was approximately three to four car lengths ahead of him, had collided with the vehicle in front of it. He stated that he braked and swerved to the left to avoid colliding with plaintiff's vehicle, but was unable to stop before striking the left rear bumper of plaintiff's vehicle.

{¶ 10} Upon review of the testimony and other evidence presented, the court finds that plaintiff failed to prove that Hoelscher's negligence was the sole proximate cause of her injuries. There is no question that an injury may have more than one proximate cause. *Murphy v. Carrollton Mfg. Co.* (1991), 61 Ohio St.3d 585, 587-588, citing Prosser and Keeton, Law of Torts (5 Ed.1984) 266-268, Section 41. (Additional citations omitted.) "'In Ohio, when two factors combine to produce damage or [injury], each is a proximate cause.'" Id. quoting *Norris v. Babcock & Wilcox Co.* (1988), 48 Ohio App.3d 66, 67.

{¶ 11} The weight of the evidence in this case persuades the court that plaintiff was negligent in that she failed to observe both that the driver of the vehicle in front of her had slowed considerably, and that it was not safe for her to continue accelerating in preparation for merging onto the interstate. "While it is true that generally one has a right to assume that other drivers will exercise due care and observe the law, this does not permit one to drive blindly down the highway. A driver is always under a duty to exercise ordinary care under the circumstances." *Orr v. Zeff* (Mar. 26, 1980), Hamilton App. No. C-790022. The court finds that both plaintiff and Hoelscher were negligent and that the negligence of each of them was a proximate cause of plaintiff's injuries. The court further finds, pursuant to R.C. 2315.19, Ohio's former comparative negligence statute, that plaintiff's negligence was greater than Hoelscher's inasmuch as plaintiff had an opportunity to avoid a collision if she had exercised ordinary care in not

accelerating to a position too close to the driver in front of her and in failing to observe that the driver was hesitating before merging onto the interstate. By contrast, while Hoelscher also violated the assured-clear-distance-ahead statute, there was little he could do to avoid colliding with plaintiff's vehicle once it became disabled.

{¶ 12} Accordingly, the court concludes that any recovery for plaintiff in this case is barred by reason of her own negligence and judgment shall be entered in favor of defendants.

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

CRYSTAL R. REID

Plaintiff

v.

DEPARTMENT OF PUBLIC SAFETY, et al.

Defendants
Case No. 2004-10159

Judge Joseph T. Clark

JUDGMENT ENTRY

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 defendants. 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:

Linda S. Stukey
5771 Heather Hollow Drive
Dayton, Ohio 45415-2609

Susan M. Sullivan
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

LH/cmd
Filed August 3, 2009
To S.C. reporter August 12, 2009