

[Cite as *Thames v. Ohio Dept. of Transp.*, 2008-Ohio-4793.]

Court of Claims of Ohio

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TAMMY THAMES

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, et al.

Defendants

Case No. 2005-03059

Judge Clark B. Weaver Sr.
Magistrate Anderson M. Renick

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} This case arises out of a motor vehicle collision involving plaintiff's automobile and a snowplow operated by Damaris Coreano, an employee of defendant, Ohio Department of Transportation (ODOT). The collision occurred at approximately 2:45 a.m. on February 23, 2003, in the northbound lane of Interstate 77 (I-77), in Cleveland, Ohio. In the vicinity of the accident, northbound I-77 is a three-lane roadway that is separated from the southbound lanes by a median. According to the traffic crash report that was completed by an officer of the Cleveland Police Department, the contour of the roadway at the site of the accident was straight and level. (Defendants' Exhibit B.)

{¶ 3} Plaintiff asserts that she was driving her vehicle in the center lane when the snowplow suddenly veered left and struck her vehicle. As a result of the impact, plaintiff sustained personal injury and damage to her vehicle. Defendants contend that the accident was caused by plaintiff's failure to maintain control of her vehicle.

{¶ 4} 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. Generally, with regard to the operation of motor vehicles, negligence is

the failure to exercise ordinary care or the failure to perform an act required by law. 8 Ohio Jurisprudence 3d (1978) Automobiles and Other Vehicles, Section 448.

{¶ 5} Plaintiff testified that she had attended a wedding reception on the evening of February 22, 2003, and that she was returning to her home when the incident occurred. According to plaintiff, the temperature was above freezing and there was no precipitation. Plaintiff testified that she was familiar with the roadway and had traveled it many times prior to the accident. Plaintiff estimated that she was traveling at a speed of 40 to 45 miles per hour when the accident occurred and that the snowplow was traveling at a slower speed. Plaintiff stated that she was traveling behind the snowplow in the right lane and that she drove to the center lane in order to pass the truck. According to plaintiff, the snowplow swerved into the center lane and collided with the right front side of her vehicle.

{¶ 6} James Boyle, a transportation administrator who supervised employees in ODOT's District 12, testified that it was standard procedure to assign two truck drivers to perform snow and ice removal on the northbound lanes of I-77. According to Boyle, one truck was designated as the "ramp truck" and was assigned to operate both in the right lane and on all highway ramps. The second truck was designated as the "mainline truck" and was assigned to clear "non-ramp" lanes. Boyle testified that ODOT's records showed that between the hours of midnight and noon on the day of the incident, both freezing rain and snow fell on the highway as the temperature dropped from 32 to 18 degrees. (Defendants' Exhibit A.) The police officer who responded to the accident reported that there was snow on the highway. (Defendants' Exhibit B.)

{¶ 7} Demaris Coreano, the driver of the snowplow, testified by way of a videotaped deposition that she began her shift at midnight and that she was assigned to drive the ramp truck on I-77 north. Coreano testified that she performed a routine inspection of her truck before she activated the yellow strobe lights and began driving at approximately 12:45 a.m. Coreano recalled that she plowed "a lot" of snow during her shift and that she was plowing snow onto the berm from the right lane when the

accident occurred. According to Coreano, she felt a “bump” and then noticed that the truck had begun to rotate to the left. Coreano was adamant that she did not drive into the center lane and that plaintiff’s vehicle struck the truck while the truck was traveling in the right lane.

{¶ 8} Considering the divergent accounts of the accident in this case, the determination of whether ODOT breached a duty owed to plaintiff necessarily turns upon witness credibility. “In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony.” *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 9} With regard to visibility and road conditions at the time of the accident, the court finds that the testimony of plaintiff was not credible. Although plaintiff testified that she was uncertain about the exact temperature at the time of the incident, she maintained that the temperature was above freezing and that there was no precipitation on the roadway. However, Coreano testified that the visibility was poor and that it was “snowing heavily” when she exited ODOT’s truck to check on plaintiff’s condition. Both ODOT’S road log and the police report document the presence of snow on the highway. The evidence corroborates what the court found to be credible testimony by Coreano regarding the presence of snow.

{¶ 10} As to the drivers’ actions, the court finds the testimony of Coreano to be more credible than plaintiff’s testimony. Specifically, the court is not persuaded that the snowplow suddenly entered the center lane as plaintiff’s vehicle began to pass the truck. ODOT’s employees testified credibly that the snowplow drivers who are assigned to the ramp route routinely travel in the right lane of the highway. Coreano’s testimony that she was traveling slowly and plowing snow toward the berm of the highway was

credible and consistent with her assigned duties. The court further finds that the photographic evidence depicting the damage to both the snowplow and plaintiff's automobile supports defendants' assertion that the snowplow was traveling in the right lane when the vehicles collided.

{¶ 11} Based upon the totality of the testimony and evidence, the court finds that plaintiff has failed to prove by a preponderance of the evidence that ODOT's employee was negligent. Accordingly, judgment is recommended in favor of defendants.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

ANDERSON M. RENICK
Magistrate

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