

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

SANDRA L. LENAGHAN

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-06071-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On June 16, 2007, at approximately 5:20 a.m., plaintiff, Sandra L. Lenaghan, was driving her 1998 Suzuki 800 Marauder motorcycle through a construction area on Interstate 480 in Cuyahoga County, when she lost control of her vehicle on a section of uneven pavement surface causing substantial property damage to the motorcycle. Plaintiff recalled that before the damage incident she had been traveling north on Interstate 71 and observed a sign indicating “construction ahead” near the Interstate 480 entrance ramp from Interstate 71. Plaintiff stated, “[a]s I merged onto 480 I encountered two basic lanes of orange barrels, others off to the right, none in a formation as to indicate which lane traffic should be in.” Plaintiff asserted the roadway area was devoid of any signage to notify motorists of lane closures or to warn of pavement conditions. Plaintiff explained that without receiving any clear indication through signs or lane markings which course of travel she should follow, she decided to drive her motorcycle to the far left. Plaintiff related as she pursued this path of travel she observed “vehicle lights further ahead in the far right lane [and] I then thought that this must be the lane open to traffic.” Upon noticing the vehicle lights in the far right roadway lane plaintiff attempted to merge her motorcycle from the far left lane into the right lane. However, according to plaintiff, she did not realize the left roadway lane had been milled and “graded down approximately 6 inches” below the pavement surface of

the right roadway lane. Plaintiff related as she “tried to merge over to the right lane, my front tire hit the 6 inch grade and I went down sliding along the grade” causing minor personal injury to herself as well as substantial property damage to her motorcycle.

{¶2} Immediately after the described incident when plaintiff was able to right her motorcycle she was approached by a construction worker who came to ask if she was injured. Apparently, the vehicles plaintiff had noticed in the right lane of Interstate 480 were construction equipment being operated by a roadway construction crew employed by Karvo Paving Company (“Karvo”). Plaintiff recalled she asked the construction worker who approached her where she was supposed to drive her motorcycle on Interstate 480, implying the traffic control barrel configuration made it confusing for motorists to ascertain the proper directed lane of travel. Plaintiff noted the construction worker replied, “It’s kind of hard to tell, isn’t it?” After this verbal exchange, plaintiff started her damaged motorcycle and continued traveling on the roadway to her destination.

{¶3} Subsequently, plaintiff spoke with a Karvo representative identified as Kathleen regarding the June 16, 2007 damage incident. Plaintiff asserted that she was told Karvo performed all work on Interstate 480, including the placement of signs, according to specifications and requirements mandated by defendant, Department of Transportation (“DOT”). Consequently, plaintiff filed this complaint alleging her property damage was proximately caused by negligence on the part of defendant in not providing proper direction for marking the correct lane of travel in a roadway under construction. Plaintiff observed the particular section of Interstate 480 within the limits of the construction project, “is an absolute mess.” Plaintiff stated, “I believe had the roads been properly marked and a correct lane of travel indicated, this incident would never have happened.” Plaintiff seeks damages in the amount of \$2,401.00, the complete cost of repair for her motorcycle. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that amount along with her damage claim.

{¶4} Defendant acknowledged plaintiff’s damage incident occurred within the

limits of a roadway construction project where a section of Interstate 480 between mileposts 6.78 and 8.97 was in the process of being repaved. Defendant explained the roadway area within the construction zone was under the control of DOT contractor, Karvo. This area included milepost 8.73 on Interstate 480, the approximate location of plaintiff's damage event. Defendant asserted Karvo was responsible "for any occurrences or mishaps in the area in which they (were) working," although all work, including traffic control, was to be performed according to DOT specifications and requirements. Additionally, it appears the construction work performed was subject to the direction of a DOT Project Engineer.

{¶15} Defendant submitted a written statement from DOT Project Engineer, Robert J. Wallace, regarding his knowledge of the circumstances regarding the present claim. Wallace, who was not on the work site on June 16, 2007, discussed plaintiff's claim with the Karvo Workzone Traffic Supervisor. This Karvo representative denied any knowledge of a motorcycle accident occurring within the construction project limits on June 16, 2007, according to Wallace. Wallace recorded, "I also discussed the incident with the highway technician who was inspecting that morning and he also was not aware of any motorcycle accident." Wallace recalled Karvo crews worked in the area from 7:00 p.m. on June 15, 2007, to 11:30 a.m. June 16, 2007.

{¶16} Defendant also submitted a report from Cathleen Geddes, Karvo Safety Risk Manager, concerning her investigation of the events of June 16, 2007. Regarding the construction area of Interstate 480 on June 16, 2007, Geddes provided the following:

{¶17} "Karvo Paving complied with all proper traffic control set forth for this project. The construction zones were clearly marked and some examples of these signs along the described route are the following; work ahead signs with 480 shields, yield ahead, yield, reduce speed limit, penalty signs. Additional temporary signs are placed when there are zones on the road. We had two crews working on the west bound side of the road. There was a full depth crew, which worked between stations

570+00 & 540+00, and a grinding crew which worked between stations 455+00 and 480+00. The full depth crew was east of the motorcyclist.”

{¶8} From reviewing plaintiff’s complaint, Geddes determined plaintiff drove her motorcycle over 3/4 of a mile within the marked construction zone before the incident forming the basis of this claim occurred. Geddes denied there were any “6” drop offs” at the specific site and noted “all butt joints were tapered to a 10:1 ratio.” Additionally, Geddes noted, “[t]he only drop off was 3” or less where we were milling in the zone.” Geddes observed, the right two lanes of Interstate 480 within the milling zone were closed to traffic. Geddes expressed the opinion that any motorist traveling through the area on June 16, 2007 had to be aware of construction activity and the direction of travel with all zones clearly marked. Geddes asserted all signs required were in place.

{¶9} Defendant contended plaintiff has failed to produce sufficient evidence to establish her damage occurrence was proximately caused by any negligence attributable to DOT or its agents. Defendant maintained all precautions were taken to protect and notify motorists of roadway conditions through the construction site. Defendant related all traffic devices were properly positioned. Defendant denied any duty owed to plaintiff was breached.

{¶10} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached 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, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant’s negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, “[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to

sustain such burden.” Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶11} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864. The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-09343-AD, jud, 2004-Ohio-151. Furthermore, despite defendant’s contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with a duty to inspect the construction site and correct any known deficiencies in connection with particular construction work. See *Roadway Express, Inc. v. Ohio Dept. of Transp.* (June 28, 2001), Franklin App. 00AP-1119.

{¶12} In order to find liability for a damage claim occurring in a construction area, the court must look at the totality of the circumstances to determine whether DOT acted in a manner to render the highway free from an unreasonable risk of harm for the traveling public. *Feichtner v. Ohio Dept. of Transp.* (1995), 114 Ohio App. 3d 346, 683 N.E. 2d 112. In fact, the duty to render the highway free from unreasonable risk of harm is the precise duty owed by DOT to the traveling public both under normal traffic conditions and during highway construction projects. See e.g. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42, 564 N.E. 2d 462.

{¶13} In the instant claim, evidence suggests plaintiff’s damage incident occurred when she chose to drive her motorcycle onto a roadway lane closed to travel. Plaintiff contended her driving maneuver was prompted by lack of notifying signage and confusing traffic control. Defendant asserted all signage mandated was in place and all

traffic control was properly positioned. Despite the voluntary act of plaintiff in driving her motorcycle onto a closed roadway lane, defendant may still bear liability if it can be established if some act or omission on the part of DOT was the proximate cause of plaintiff's injury. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477. The evidence available tends to establish Karvo complied with all DOT specifications in regard to sign placement and traffic control in the construction area. Plaintiff has not produced evidence to show her damage was caused by any negligence on the part of DOT or its agents in maintaining the construction zone. See *Reed v. Ohio Dept. of Transp., Dist. 4*, Ct. of Cl. No. 2004-08359-AD, 2005-Ohio-615. The evidence provided shows the sole cause of plaintiff's property damage was her own driving maneuver. See *Yockey v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2004-07425-AD, 2005-Ohio-456.

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- 7 -

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ENTRY OF ADMINISTRATIVE DETERMINATION

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Sandra Lenaghan
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RDK/laa

12/18
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