

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

JANICE E. BURCH

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-06971-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On May 21, 2008, personnel of defendant, Department of Transportation (“DOT”), conducted a roadway painting operation on State Route 47. The painting project involved the application of white paint from a moving vehicle onto the roadway edgeline. Defendant described the painting operation as a moving work zone involving at least three vehicles, a lead vehicle, a line marking vehicle, and a trail vehicle. Defendant asserted all required traffic control devices, including warning signs, were utilized during the May 21, 2008 edgeline painting. The trail vehicle’s function was to inhibit traffic from entering into the striping operation during the time paint was being applied to the roadway surface.

{¶ 2} Plaintiff, Janice E. Burch, stated she was driving on State Route 47 East, on May 21, 2008 at about 3:30 p.m., when she approached “a truck going real slow.” According to plaintiff, the slow moving truck did not display any signs or flashing lights. Plaintiff recalled she followed the slow moving truck on a hilly grade for a period intending to pass the vehicle when an opportunity arose. Plaintiff noted, “(w)hen I finally

could pass, and as I got even with the truck, there was another truck (paint striper) in front of it and they were striping the road.” Plaintiff asserted white paint from the paint striper truck splattered the right side lower panel of her car.

{¶ 3} Plaintiff implied the paint damage to her automobile was proximately caused by negligence on the part of defendant in failing to warn her of the freshly applied paint on the roadway. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$866.70, representing paint removal costs, car rental expenses, and inconvenience. The \$25.00 filing fee was paid.

{¶ 4} Defendant denied any liability in this matter. Defendant asserted all proper traffic control was in place on May 21, 2008 to notify motorists of the painting project on State Route 47. Defendant contended plaintiff has failed to prove any negligent act or omission on the part of DOT was the proximate cause of her property damage. Defendant suggested plaintiff voluntarily chose to drive over the freshly painted white edgelines and therefore, her own actions resulted in the property damage incident. Defendant asserted plaintiff had full knowledge of the painting operation and failed to heed the warning devices in place such as sign and the slow moving trail vehicle. Defendant argued plaintiff failed to offer any evidence to prove DOT's paint crew breached any duty to the motoring public which proximately caused the damage claimed.

{¶ 5} Defendant submitted a written statement from DOT Roadway Service Manager, Ralph Van Kirk, who insisted “all signs and traffic control were properly displayed” during the May 21, 2008 painting activity on State Route 47. Van Kirk noted that on some occasions during edgeline painting a motorist will pass the trailing vehicle and then drive between the striper truck and the trailing vehicle. Furthermore, Van Kirk related that during these occasions when a motorist drives between a paint striper truck and a trailing vehicle, the motorist will drive onto the freshly painted edgeline.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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. Department of Transportation* (2000), 99-12545-AD. A failure to exercise ordinary care may be shown in situations where motorists do not receive adequate or effective advisement of a DOT painting activity. See *Hosmer v. Ohio Department of Transportation*, Ct. of Cl. No. 2002-08301-AD, 2003-Ohio-1921. In the instant claim, plaintiff has acknowledged she discovered defendant was conducting edgeline painting after she had passed the trailing vehicle. Both plaintiff and defendant are in dispute whether or not signs and other warnings of the painting operation were in place.

{¶ 8} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately caused by defendant's negligence. Plaintiff has failed to show that her property damage was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the area, or that there was any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Conversely, evidence directs the court to conclude plaintiff's own negligent driving was the cause of her property damage. Therefore, this claim is denied. See *Rolfes v. Ohio Dept. Of Transportation*, Ct. Of Cl. No. 2004-09941-AD, 2005-Ohio-840; *Delamatter v. Ohio Dept. Of Transp.*, Ct. Of Cl. No. 2007-01355-AD, 2007-Ohio-6387.

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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:

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RDK/laa
10/20
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