[Cite as *Goodwin v. Ohio Dept. of Transp.*, 2009-Ohio-2757.]

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

TIANNA GOODWIN

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-09791-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On July 17, 2008, at approximately 7:30 p.m., plaintiff, Tianna Goodwin, was traveling south on State Route 60 in Muskingum County, when she drove her vehicle off the traveled portion of the roadway damaging two rims. Plaintiff described the property damage incident noting: "I approached the intersection of OH-60 and Raiders Rd. The light was green, so I traveled through. Upon crossing the intersection, the lane I was in ended abruptly and I was suddenly off the road. As I pulled left to get back on the road, both rims on the right side of my car were ripped away from the tire due to a large dip right along the edge of the road."

{¶ 2} 2) Plaintiff submitted photographs depicting the intersection of State Route 60 and Raiders Road and the berm area where she drove off the traveled portion of the roadway. The photographs clearly show white edge lines and pavement markers (reflectors) demarcate the traveled portion of the roadway. Although the approach to the intersection and the roadway across the intersection are not in straight alignment the roadway edges are clearly marked. The photographs also depict a distance of

approximately three feet between the white painted roadway edge line and the unpaved berm edge where plaintiff drove.

{¶ 3} 3) Plaintiff implied the property damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"). Plaintiff filed this complaint seeking to recover damages of $1,328.03, the total cost of replacement parts. The $25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 4} 4) Defendant denied liability in this matter based on the contention that DOT personnel had any knowledge of a roadway defect prior to plaintiff's incident. Furthermore, defendant pointed out the actual condition that caused plaintiff's property damage is located off the roadway and DOT generally cannot be held liable for property damage incidents occurring from conditions off the traveled portion of the roadway.

{¶ 5} 5) Defendant argued plaintiff has failed to prove her property damage was caused by negligent roadway maintenance on the part of DOT. Defendant submitted a statement from DOT Muskingum County Manager, Raymond Dailey, regarding the intersection area of State Route 60 and Raiders Road. Dailey recorded: "I have not received any other complaints (external or internal) about this problem despite the fact that Traffic Counts in this area are over 1500 vehicles daily. The road is striped and has raised pavement markers on both center-line and edge-lines." Additionally, Dailey observed the incident forming the basis of this claim occurred during daylight hours when road conditions are highly visible to motorists. According to Dailey the actual intersection area, "seems to be fairly wide allowing plenty of sight distance and response time" for motorists traveling through. Defendant asserted plaintiff did not offer evidence to prove her damage was proximately caused by conduct attributable to DOT.

CONCLUSIONS OF LAW

{¶ 6} Plaintiff has essentially argued her property damage was proximately caused by negligence on the part of defendant in designing the roadway intersection area. Plaintiff has not produced any evidence other than her own assertion to establish the damage to her vehicle was caused by negligent highway design.

{¶ 7} Defendant has the duty to maintain its highway 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.

{¶ 8} 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, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 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. 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.

{¶ 9} Plaintiff has not presented requisite evidence to prove her car was damaged as a proximate result of negligent design under the control of DOT. As a necessary element of her claim, plaintiff was required to prove proximate cause of her damage by a preponderance of the evidence. See, e.g. *Stinson v. England*, 69 Ohio St. 3d 451, 1994-Ohio-35, 633 N.E. 2d 532. In a situation such as the instant claim, plaintiff is required to produce expert testimony regarding the issue of causation and that testimony must be expressed in terms of probability. *Stinson*, at 454. Plaintiff, by not supplying the requisite testimony to state a prima facie claim, has failed to meet her burden of proof. See *Ryan v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2003-09297-AD, 2004-Ohio-900. Consequently, her claim is denied.

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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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Tianna Goodwin
180 Woodside Drive
Pataskala, Ohio 43062

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
2/29
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