

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

NORMA L. ROE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-09872-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On July 16, 2008, personnel of defendant, Department of Transportation (“DOT”), conducted a roadway painting operation on State Route 60 in the vicinity of Beverly, Ohio in Washington County. The painting project involved the application of white paint from a moving vehicle onto the roadway edgeline from mileposts 21.0 to 2.80 on State Route 60. Defendant described the painting operation as a moving work zone involving at least three vehicles, a lead paint truck, a paint striper, and a trail vehicle. Defendant asserted all required traffic control devices, including warning signs, were utilized during the July 16, 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, Norma L. Roe, related she was driving her 2004 Ford Freestar south on State Route 60 on July 16, 2008 between 9:00 a.m. and 9:15 a.m., when she approached the DOT painting operation. Plaintiff stated, “I was going south on State

Route 60 out of Beverly, Ohio (approximately milepost 19.50) there was a truck going south painting the white edge line, there was a flat bed truck (trail vehicle) following.” Plaintiff further stated, “[w]hen we crossed the city limits sign, the driver in the back truck flagged seven cars around him.” Apparently, plaintiff was the seventh vehicle in a line behind the DOT trail vehicle. According to plaintiff, all seven vehicles passed the DOT trail vehicle and then maneuvered between the DOT paint striper and the DOT trail vehicle. Plaintiff noted, “[t]hen three cars passed the paint truck (and) [f]our of us had to follow it until we got around a bend to pass the paint truck.” After passing the paint striper, plaintiff continued traveling on State Route 60 and drove to several locations before noticing white paint splatter on the right side of her minivan at sometime during the afternoon of July 16, 2008.

{¶ 3} Plaintiff implied the paint damage to her minivan was proximately caused by negligence on the part of defendant in failing to exercise reasonable care to protect motorists while conducting the edgeline painting. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$1,104.30 for paint removal costs. 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 July 16, 2008 to notify motorists of the painting project on State Route 60. 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. Defendant observed plaintiff acknowledged she was aware of the DOT painting activity and chose to drive her vehicle onto fresh paint.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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 and voluntarily passed the trailing vehicle exposing her vehicle to the known danger associated with driving over fresh paint.

{¶ 7} 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:

Norma L. Roe
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RDK/laa
3/17
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