[Cite as *Phillips v. Dept. of Transp.*, 2009-Ohio-5106.]

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

TERESA PHILLIPS

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-10374-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Teresa Phillips, filed this action against defendant, Department of Transportation ("DOT"), alleging negligent conduct on the part of DOT personnel in regard to roadway maintenance proximately caused damage to her 2001 Volkswagen Jetta on July 15, 2008. Plaintiff has a residence adjacent to State Route 296 in Urbana, Ohio. Plaintiff has access from her residence to State Route 296 by a sloped driveway. Plaintiff related she was traveling north on State Route 296 on July 15, 2008 on her way home when she noticed a DOT dump truck parked directly beside the driveway to her home and a DOT work crew reshaping a ditch area adjacent to her driveway along the roadway right-of-way. Plaintiff stated "[n]orthbound traffic, such as myself was being (redirected) into the southbound lane to avoid the dump truck." Defendant acknowledged flaggers were employed to direct traffic through the work zone on State Route 296. Plaintiff noted "[s]ince the truck was right beside my driveway, this put me entering the driveway at a straight angle (and consequently) [u]pon entering the driveway the bottom of my car hit the driveway," causing damage to the spoiler, fender liner, bumper, and baffle on the Volkswagen Jetta. Plaintiff recorded the DOT crew had "'gutted' out the bottom of the driveway thus changing the slope significantly." Plaintiff denied she received any advance notice of the DOT work activity on the ditch adjacent

to her driveway. Furthermore, plaintiff recalled no signage was in place to advise her about the depth change at the end of her driveway and no traffic control cones were in place. Also plaintiff recalled "[t]here were no (DOT) flaggers to convey any information to those who would be entering the driveway." Plaintiff contended defendant acted negligently in failing to give her prior notice of the maintenance activity and in directing her to travel onto a hazardous roadway area created by DOT personnel. Plaintiff filed this complaint seeking damages in the amount of $822.06 for automotive repair costs incurred resulting from the July 15, 2008 incident. Plaintiff acknowledged she carries insurance coverage for automotive repair with a $500.00 deductible provision and has indicated she received $322.06 from her insurer to defray the cost of repair. Pursuant to R.C. 2743.02(D), plaintiff's damage claim is limited to $500.00. The $25.00 filing fee was paid.

{¶ 2} Defendant explained a DOT crew from the Champaign County Garage was "working in the right-of-way in front of plaintiff's house and the neighbor's house reshaping the ditch" along State Route 296. Defendant noted the ditch reshaping "work was being done to correct a water drainage problem caused by the incorrectly sloped drives" of both plaintiff and her neighbor. Defendant pointed out plaintiff's neighbor, Richard Evans, is her father. According to defendant, both the ditch and driveways were being reshaped to direct water flow into the ditch instead of the traveled portion of State Route 296.

{¶ 3} Defendant advised DOT Champaign County Transportation Manager, Terry Hoylman, informed Richard Evans about the intention to clear the ditch along State Route 296. In a handwritten statement from Hoylman (copy submitted), he wrote "[n]o date was set to do this job." Hoylman also noted he was "off on leave" when plaintiff's incident occurred and was consequently not at the work site.

{¶ 4} Defendant submitted an additional handwritten statement (dated March 18, 2009) from DOT employee, Traci Domanek, who acted as the flagger on the south end of the July 15, 2008 ditch clearing project. Domanek recalled, "I was holding the slow sign as I motioned traffic around and into the southbound lane, the lady (plaintiff) gave no indication she was making a right turn into the driveway such as a turn signal." Domanek wrote "she (plaintiff) turned into her driveway at a high rate of speed."

{¶ 5} Defendant stated Domanek "did not have an opportunity to stop the plaintiff or warn her of the difference in elevation between the drive and the highway,

nor did she stop to ask if it was safe for her to pull into her driveway." Defendant argued plaintiff "has failed to introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the ODOT was the cause of her incident." Defendant essentially contended plaintiff has failed to produce sufficient evidence to prove her property damage was caused by any breach of duty DOT owed to the motoring public while engaging in a roadway maintenance activity.

{¶ 6} Defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Reasonable or ordinary care is that degree of caution and foresight which an ordinary prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St. 2d 310, 31 O.O. 2d 573, 209 N.E. 2d 142.

{¶ 7} 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.

{¶ 8} This court, as the 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} "If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of negligence. It is not necessary

that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 10} Evidence in the instant claim establishes defendant created a hazardous condition at the entrance to plaintiff's drive by conducting ditch clearing operations on State Route 296. Although defendant knew about this hazardous condition, no measures were taken to barricade the driveway entrance or warn motorists such as plaintiff about the driveway entrance. The evidence has shown DOT's flagger gave plaintiff every indication she could proceed safely and could safely make a blind turn into her driveway from the southbound lane of State Route 296. DOT's flagger waved plaintiff into the southbound lane and motioned for her to proceed. The evidence presented establishes the damage to plaintiff's vehicle was caused by negligence on the part of defendant's employee in directing traffic through a roadway maintenance area. See *Waugh v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2004-04877-AD, 2004-Ohio-4375. Sufficient evidence has been presented to establish defendant breached its duty of care to protect motorists from hazards arising out of DOT maintenance activities. Plaintiff has proven her property damage was caused by the acts of DOT personnel. See *Vitek v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2004-09258-AD, jud, 2005-Ohio-1071; *Zhang v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2008-07811-AD, 2008-Ohio-7077; *Barnett v. Ohio Dept. of Transp.* Ct. of Cl. No. 2008-08809-AD, 2009-Ohio-1589. Consequently, defendant is liable to plaintiff for the damages claimed, $500.00, plus the $25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $525.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Teresa Phillips
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RDK/laa

5/18
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