[Cite as *Simonson v. Ohio Dept. of Transp., Dist. 11*, 2009-Ohio-2417.]

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
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JOHN SIMONSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 11

Defendant

Case No. 2008-10382-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, John Simonson, filed this action against defendant, Department of Transportation ("DOT"), for property damage expenses resulting from a motor vehicle collision that occurred on US Route 250 in Belmont County on September 15, 2008, at approximately 11:45 a.m. Plaintiff seeks recovery of damages in the amount of $500.00, his insurance coverage deductible for vehicle repair costs from the September 15, 2008 motor vehicle collision involving plaintiff's 2003 Chevrolet Silverado and a 1998 Mercedes Benz ML320 van. Plaintiff submitted the $25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 2} Evidence has shown a major weather event in the form of a severe wind storm occurred throughout Ohio including Belmont County on September 14, 2008, the day before plaintiff's incident. Apparently, high velocity winds from the storm felled a large tree growing adjacent to US 250 at approximately milepost 8.70 in Pease Township near the Village of Bridgeport The tree, which fell at about 6:00 p.m. on September 14, 2008, was entangled with live power lines and spanned the entire westbound road lane of US Route 250. At some time after the tree fell, defendant

received notification of the fallen tree but did not act to remove this particular obstruction, "because live power lines were entangled in the tree's canopy." Instead, DOT Belmont County Engineer, Dave Schafer, contacted the mayor of the Village of Bridgeport and requested Village personnel place some form of traffic control in front of the tree until DOT crews and local electric company employees could be dispatched to the scene to clear the tree with entangled power lines from the roadway. Village of Bridgeport personnel responded to DOT's request by placing a saw horse type barricade with attached light on the roadway in front of the downed tree. Plaintiff submitted photographs depicting the saw horse barrier positioned on the roadway. One photograph shows the barrier was placed on US Route 250 at least ten feet in front of the fallen tree. Another photograph depicting the barrier shows it appears visible to motorists in the westbound lane from at least two hundred feet away, if not more. The saw horse barricade, without any additional traffic control, remained in place from September 14, 2008 until such time as the fallen tree could be safely removed from the roadway.

{¶ 3} Plaintiff related he was driving his 2003 Chevrolet Silverado west on US Route 250 in Belmont County on September 15, 2008, when he approached a van also traveling in the westbound lane. Plaintiff recalled he "drove through a small 'S' in the road" and observed the van slowing, but not braking. According to plaintiff, as he closed distance, the van accelerated and he in turn accelerated his vehicle after looking in his rear view mirror. Plaintiff noted: "(the van) then stopped suddenly and I was about 5 feet short. I hit the van in the rear end." Plaintiff recorded that after the collision he got out of his truck and observed the fallen tree laying across the westbound lane of US Route 250. Plaintiff stated "[o]nly a barrier horse placed about 10 feet in front of the tree served as a warning" to motorists traveling on US 250. Plaintiff pointed out the fallen tree was down on the roadway for a period of eighteen hours and no warning signs were in position along the roadway to notify motorists of the hazardous condition

presented. Furthermore, plaintiff contended various conditions such as "the 'S' shape of the road, the guardrail on the left side, and the lowness of the tree obscured the visibility," thereby exacerbating the increased chance of accident when sufficient notifying signage was not in place.

{¶ 4} The September 15, 2008 motor vehicle collision was investigated by the Ohio State Highway Patrol ("OSHP"). A copy of the OSHP "Traffic Crash Report" of the incident was filed with plaintiff's complaint. According to the Traffic Crash Report, plaintiff stated he was traveling approximately 30 MPH at the time of the collision and the driver of the Mercedes Benz van, Dolores D. Spragg stated her vehicle was stopped when the crash event occurred. Posted speed on the roadway was 50 MPH. The investigating OSHP trooper recorded "[t]here was .2 miles of visibility for westbound traffic to see the tree." Neither plaintiff nor Dolores D. Spragg offered any voluntary statement regarding the collision to the OSHP. Based on information gathered, plaintiff was cited by the OSHP with a violation of R.C. 4511.21(A), the Assured Clear Distance Ahead ("ACDA") statute.[1] Despite the fact plaintiff was cited for a violation of ACDA, he has argued the proximate cause of the September 15, 2008 motor vehicle collision and resulting property damage was negligence on the part of DOT in failing to install proper signage to adequately notify motorists of the fallen tree condition on US Route 250. R.C. 4511.09 requires that DOT adopt a manual and specifications for a uniform system of traffic control devices. In compliance with the mandate, DOT adopted the Ohio Manual of Uniform Traffic Control Devices ("OMUTCD") or ("the manual"), which sets forth standards for the installation and maintenance of traffic control devices. *Winwood v. Dayton* (1988), 37 Ohio St. 3d 282, 284, 525 N.E. 2d 808. Pursuant to *Pierce v. Ohio*

[1] R.C. 4511.21(A) provides:

"(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead."

Dept. of Transp. (1985), 23 Ohio App. 3d 124, 23 OBR 235, 491 N.E. 2d 729, the state is liable in damages for accidents which are proximately caused by its failure to conform the requirements of the manual. See, also, *Lumbermens Mut. Cas. Co. v. Ohio Dept. of Transp.* (1988), 49 Ohio App. 3d 129, 130, 551 N.E. 2d 215. In the instant claim, plaintiff contended defendant failed to comply with guidelines established in the manual by not installing any signs on State Route 250 to warn motorists of the fallen tree condition. Plaintiff cited Section 2C.05 of the manual covering the placement of warning signs[2], which provides:

{¶ 5} "Section 2C.05 Placement of Warning Signs

{¶ 6} "Standard:

{¶ 7} "Warning signs shall be installed in accordance with the general requirements for sign placement as described in Sections 2A.16 to 2A.21.

{¶ 8} "Support:

{¶ 9} "The total time needed to perceive and complete a reaction to a sign is the sum of the times necessary for Perception, Identification (understanding), Emotion (decision making), and Volition (execution of decision), and is called the PIEV time. The PIEV time can vary from several seconds for general warnings signs to 6 seconds or more for warning signs requiring high road user judgment.

{¶ 10} "Table 2C-4 lists suggested sign placement distances for three conditions. This table is provided as an aid for determining warning sign location.

{¶ 11} "Guidance:

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[2] Sections 2C.01 and 2C.02 of the manual state:

"Section 2C.01 Function of Warning Signs

"Support:

"Warning signs call attention to unexpected conditions on or adjacent to a highway or street and to situations that might not be readily apparent to road users. Warning signs alert road users to conditions that might call for a reduction of speed or an action in the interest of safety and efficient traffic operations.

"Section 2C.02 Application of Warning Signs

"Standard:

{¶ 12} "Warning signs should be placed so that they provide adequate PIEV time. The distances contained in Table 2C-4[3] are for guidance purposes and should be

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"The use of warning signs shall be based on an engineering study or on engineering judgment."

[3]Table 2C-4. Guidelines for Advance Placement of Warning Signs
(English Units)

Posted or 85th-Percentile Speed	Advance Placement Distance[1]						
	Condition A: High judgment required[2]	Condition B: Stop Condition[3]	Condition C: Deceleration to the listed advisory speed (mph) for the condition[4]				
			10	20	30	40	50
20 mph	175 ft	N/A[5]	N/A[5]	—	—	—	—
25 mph	250 ft	N/A[5]	100 ft	N/A[5]	—	—	—
30 mph	325 ft	100 ft	150 ft	100 ft	—	—	—
35 mph	400 ft	150 ft	200 ft	175 ft	N/A[5]	—	—
40 mph	475 ft	**225 ft**	275 ft	250 ft	175 ft	—	—
45 mph	550 ft	300 ft	350 ft	300 ft	250 ft	N/A[5]	—
50 mph	625 ft	375 ft	425 ft	400 ft	325 ft	225 ft	—
55 mph	700 ft	450 ft	500 ft	475 ft	400 ft	300 ft	N/A[5]

applied with engineering judgment. Warning signs should not be placed too far in advance of the condition, such that drivers might tend to forget the warning because of other driving distractions, especially in urban areas.

{¶ 13} "Minimum spacing between warning signs with different messages should be based on the estimated PIEV time for driver comprehension of and reaction to the second sign.

{¶ 14} "The effectiveness of the placement of warning signs should be periodically evaluated under both day and night conditions."

{¶ 15} Plaintiff referenced the DOT manual in regard to the mandate to install warning signs of the potential stop condition on US Route 250 due to the fallen tree. Manual sections were cited in support of the argument that DOT's failure to place warning signs constituted negligence and that negligent omission was the sole proximate cause of plaintiff's property damage despite any act on the part of plaintiff in connection with his operation of his truck.

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60 mph	775 ft	550 ft	575 ft	550 ft	500 ft	400 ft	300 ft
65 mph	850 ft	650 ft	650 ft	625 ft	575 ft	500 ft	375 ft

(Emphasis added.)

"Notes:

"[1] The distances are adjusted for a sign legibility distance of 50 m (175 ft) which is the appropriate legibility distance for a 125 mm (5 in) Series D word legend. The distances may be adjusted by deducting another 30 m (100 ft) if symbol signs are used. Adjustments may be made for grades if appropriate.

"[2] Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. Typical signs are Merge, Right Lane Ends, etc. The distances are determined by providing the driver a PIEV time of 6.7 to 10.0 seconds plus 4.5 seconds for vehicle maneuvers minus the legibility distance of 50 m (175 ft) for the appropriate sign.

"[3] Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead or Signal Ahead. The distances are based on the 1990 AASHTO Policy for stopping sight distance (page 120) providing a PIEV time of 2.5 second, friction factor of 0.30 to 0.40, minus the sign legibility distance of 50 m (175 ft).

"[4] Typical Conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, or Cross Road. The distance is determined by providing a 1.6 second PIEV time (1990 AASHTO, page 119), a vehicle deceleration rate of 3 $m/second^2$ (10 $ft/second^2$), minus the sign legibility distance of 50 m (175 ft).

"[5] No suggested minimum distances are provided for these speeds, as placement location is dependent on site conditions and other signing to provide an adequate advance warning for the driver."

{¶ 16} Defendant asserted plaintiff failed to produce sufficient evidence to establish his property damage was caused by any negligent act or omission on the part of DOT. Defendant explained DOT work crews were "clearing the roadway as quickly as possible" in light of the emergency situation created by the high velocity wind storm of September 14, 2008. Defendant denied acting negligently under the circumstances and contended plaintiff's own negligent driving maneuver which constituted a violation of R.C. 4511.21(A) was the sole proximate cause of his property damage.

{¶ 17} Plaintiff filed a response insisting defendant should be held liable for the damage claimed citing the fact that DOT employee, Dave Schafer, admitted defendant was responsible for the highway. Plaintiff acknowledged he was cited at the scene for an ACDA violation. However, plaintiff argued the citation he received should have no bearing on a liability determination. Plaintiff again asserted the September 15, 2008 motor vehicle collision would not have occurred if defendant would have installed mandated warning signs to notify motorists of roadway conditions. Plaintiff contended DOT's failure to provide signage as mandated by the manual constituted actionable negligence and was the sole proximate cause of the September 15, 2008 collision and resulting property damage. Plaintiff submitted a copy of a DOT Damage Incident Report that indicated he had slowed his truck to 5 MPH when the vehicle struck the stopped van. Total repair costs to plaintiff's vehicle amounted to $6,767.50.

{¶ 18} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his 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. 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. Liability may be established if some act or omission on the part of DOT was the substantial proximate cause of plaintiff's property damage. 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.

{¶ 19} "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 the 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.

{¶ 20} Based on the evidence presented, the court finds the prevailing cause of the September 15, 2008 motor vehicle accident was plaintiff's own negligent driving; specifically, his failure to maintain an assured clear distance ahead, or violation of R.C. 4511.21(A). "The assured-clear-distance statute is a specific requirement of law, the violation of which constitutes negligence per se." *Estate of Eyler v. Dedomenic* (1995), 107 Ohio App. 3d 860, 864, 669 N.E. 2d 569, citing *Tomlinson v. Cincinnati* (1983), 4 Ohio St. 3d 66, 69, 4 OBR 155, 446 N.E. 2d 454. A finding of negligence per se for violating 4511.21(A) depends on whether evidence has been produced to establish a driver collided with an object that was ahead of him in the path of travel, was stationary or moving in the same direction as the driver, was readily discernible, and did not suddenly appear in the driver's path. *Estate of Eyler*. Evidence presented has indicated the vehicle plaintiff struck with his truck was clearly visible to plaintiff, was stopped, and did not suddenly appear. When plaintiff saw the van in front of him stopped on the roadway and failed to stop without avoiding a collision, he violated R.C. 4511.21(A), the assured-clear-distance-ahead statute. A violation of this statute occurs where evidence exists to indicate a driver collided with an object which: 1) was ahead of him in his path of travel, 2) was stationary or moving in the same direction as the driver, 3) did not suddenly appear in the driver's path. *McFadden v. Elmer C. Breuer Transp. Co.* (1952), 156 Ohio St. 430, 46 O.O. 354, 103 N.E. 2d 385.

{¶ 21} Therefore, even assuming defendant's omission in failing to place warning signs was negligent, plaintiff would still not prevail. This court concludes that any alleged breach of duty by defendant was less of a causative factor than plaintiff's own negligence in failing to maintain an assured clear distance ahead.

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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
1/23
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