[Cite as *Briggs v. Ohio Dept. of Transp.*, 2009-Ohio-5607.]

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

VIVIAN M. BRIGGS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-02626-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} Plaintiff, Vivian M. Briggs, filed this action against defendant, Department of Transportation (DOT), asserting that her car, a 2000 Jaguar X-J8, was damaged on March 8, 2008 while parked at the DOT District 12 garage parking lot in Garfield Heights, Ohio. Plaintiff contended that the tail pipe on her vehicle was packed with snow by a DOT maintenance worker plowing snow in and around the DOT parking lot. Plaintiff described the damage incident stating that a DOT "maintenance worker plowed my 2000 Jaguar X-J8 in a parking space so tight that snow encased my tail pipe." Plaintiff pointed out that several DOT workers were called to the scene to shovel snow from around her automobile in order for her to exit the area where she had parked. Plaintiff related that the tail pipe on her car was so impacted with snow that the weight of the snow actually broke the tail pipe. Plaintiff explained that when she discovered the snow around her vehicle she "called Supervisor Howard Heubner of the Dept. of Roadway Services to inform him what happened and he called the Supervisor of the D-12 garage to inform the crew to dig me out of the space where they had encased me earlier so that I could go home." Plaintiff asserted that the damage to her automobile

was proximately caused by negligence on the part of DOT personnel in conducting snow removal operations at the District 12 garage facility. Plaintiff requested damages in the amount of $334.64, the cost of automotive repair she incurred. The filing fee was paid.

{¶ 2} Defendant denied any liability in this matter claiming that the sole cause of plaintiff's property damage was her own driving act and was not related to any DOT snow plowing activity. Defendant explained that plaintiff is a DOT employee who reported to work on March 8, 2008 and chose to back her vehicle "into a parking spot at 5500 Transportation Blvd., Garfield Heights, Ohio, that had cones blocking off the fuel fill pots." Apparently, the area where plaintiff chose to park her vehicle was not open to parking with the traffic control cones intended to act as a barrier and deterrent to parking. Defendant submitted photographs depicting the area clearly showing multiple traffic control cones in position blocking two delineated parking spaced fronted by a curbside island. The photographs also depict two truncated open spaces on either side of the two spaces where the cones are in place. These spaces are fronted and sided by the curbed island. Defendant acknowledged that DOT employees were summoned to the scene and "helped (plaintiff) get out of her parking spot." However, defendant expressly denied that any DOT employee plowed any snow behind plaintiff's car or damaged the car's exhaust when pushing the vehicle out of the parking space plaintiff chose. Defendant maintained that plaintiff failed to offer any evidence to prove the damage to her car was proximately caused by snow removal operations.

{¶ 3} Defendant submitted a copy of an e-mail from DOT District 12 Facilities Manager, Thomas Vanek, who recorded his recollection of the March 8, 2008 incident. Vanek offered the following narrative description:

{¶ 4} "Last winter Howard Huebner called me and said Vivian Briggs was stuck in the snow could we get her out. I went over to where she was stuck with three of my facilities employees to see that Ms. Briggs had backed her rear wheel drive car over some cones that block off where the fuel fill pots are located. At no time is parking permitted in this area for any vehicles. The night before we had a substantial snow fall and she could not get out of the spot in which she parked because she backed into the spot which is on a downward slant. At this time her car was surrounded by parking islands on both sides and the rear of her car. We proceeded to snow blow and shovel

both sides of her car and in front of her car so we could try to push her out of the spot. The rear of the vehicle was not cleared because Ms. Briggs was backed into the spot up against the Island that surrounds the fill pots. Once we had cleared a path on the sides of the car and in front of the car we hand pushed her car out of the spot where it was stuck. She (then) drove away. At no time did we plow snow anywhere near the rear of her car nor did we touch her exhaust system in any way. Her car was not loud and did not sound like anything was wrong with it at the time."

{¶ 5} Plaintiff filed a response recalling that she parked in a restricted parking area on March 8, 2008 because she was prevented from parking in the main parking lot by excessive snow accumulation, "drifts up to 16" in some places." Plaintiff further recalled that she telephoned the DOT office about her parking difficulty and was directed to park at the garage parking lot where she observed DOT crews plowing the parking lot with pick up trucks equipped with plow blades. Plaintiff stated that this plowing activity "had piled up the snow so high that I had to come to a complete stop at the no permit parking area (and) [a]s I tried to get traction to go up to the main parking area in front of D-12 I couldn't go forwards or backwards due to the snow they had plowed." Plaintiff maintained that due to the continuing heavy snow fall and the inability of the DOT plow crews to properly plow the area she could not move her vehicle out of the no permit area and "[t]here was no place to go." Plaintiff noted that she left her car, worked an eight hour shift, and then returned to her vehicle which she observed "was encased all the way around in snow." Plaintiff pointed out that "the snow never let up" during her entire work shift. Plaintiff related that she could not move her car out of the area so she began to shovel snow from around the vehicle and was subsequently assisted by other DOT personnel who succeeded in removing enough snow to allow her to continue on her way. Plaintiff stated that as she drove out of the garage area she "heard a noise" and later when stopped at a traffic light "I looked in the back and my tail pipe was hanging low."

{¶ 6} 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 claim, 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. Defendant has a duty to exercise reasonable care for the protection of property when conducting any snow removal activities. *Andrews v. Ohio Department of Transportation* (1998), 97-07277-AD; *Ruminski v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-05213-AD, 2005-Ohio-4223. Defendant may bear liability if it can be established if some act or omission on the part of DOT or its agents was the proximate cause of plaintiff's injury. 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.

{¶ 7} "If an 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. Plaintiff has failed to offer sufficient proof to establish that the damage to her car was actually caused by DOT removing snow from the parking lot.

{¶ 8} Based on plaintiff's status as a DOT employee, defendant generally has a duty to exercise ordinary or reasonable care for plaintiff's safety and protection, and this includes having the premises in a reasonably safe condition and warning her of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. Van Gundy* (1982), 8 Ohio App. 3d 75, 8 OBR 103, 455 N.E. 2d 1319; *Wells v. University Hospital* (1985), 85-01392-AD. Although the occupant owes this duty or ordinary care, "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of

dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." 38 American Jurisprudence, 757, Negligence, Section 97, as cited in *Debie v. Cochran Pharmacy Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40, 40 O.O. 2d 52, 227 N.E. 2d 603.

{¶ 9} In the instant claim, plaintiff seemingly in the alternative claimed her property damage was proximately caused by defendant's failure to remove ice and snow from the parking lot. DOT was not charged to protect plaintiff from hazards normally associated with such natural accumulations. See *Brinkman v. Ross*, 68 Ohio St. 3d 82, 1993-Ohio-72, 623 N.E. 2d 1175. Defendant denied that plaintiff's property damage was related to any negligent act or omission on the part of DOT.

{¶ 10} An owner of land generally owes a duty to individuals such as plaintiff to maintain the premises in a reasonably safe condition. *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 45, 18 OBR 267, 480 N.E. 2d 474. However, a landowner ordinarily owes no duty to business invitee, such as plaintiff, to remove natural accumulations of ice and snow on the premises or to warn the invitees of dangers associated with these natural accumulations. *Brinkman*, 68 Ohio St. 3d at 84, 1993-Ohio-72, 623 N.E. 2d 1175. Everyone is assumed to appreciate the risks presented by such snow and ice accumulations and consequently, everyone is expected to bear responsibility for protecting himself from such risks presented by natural accumulations of ice and snow. *Brinkman*.

{¶ 11} "In a climate where the winter brings frequently recurring storms of snow and rain and sudden and extreme changes in temperature, these dangerous conditions appear with a frequence and suddenness which defy prevention and, usually, correction. Ordinarily, they would disappear before correction would be practicable . . . To hold that a liability results from these actions of the elements would be the affirmance of a duty which it would often be impossibile, and ordinarily impracticable . . . to perform." *Norwalk v. Tuttle* (1906), 73 Ohio St. 242, 245, 76 N.E. 617, as quoted in *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 42 O.O. 2d 96, 233 N.E. 2d 589.

{¶ 12} Consequently, plaintiff cannot recover damages from defendant based on any failure to remove natural accumulations of ice and snow. Therefore, plaintiff's 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.

_____
MILES C. DURFEY
Clerk

Entry cc:

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Filed 6/23/09
Sent to S.C. reporter 10/22/09