

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

MARY A. BEACH

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-05951-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, Mary A. Beach, filed this action against defendant, Department of Transportation (ODOT), alleging her 2008 Honda Pilot received paint damage while traveling on State Route 287 when ODOT personnel were applying fresh edge line paint to the roadway on May 27, 2009. Plaintiff pointed out she drove over wet paint that was being sprayed on the roadway edge line on State Route 287 northwest of West Liberty, Ohio. Plaintiff provided her recollection of the paint damage incident recording the following narrative: "I was driving behind a semi tractor trailer that was behind the (ODOT) paint vehicle. The (ODOT) trail vehicle was off on a side road -TWP 169 - putting orange cones at the intersection. There was not a trail vehicle behind the paint vehicle that was applying the edge line paint at the time I was driving in the area." Plaintiff related the particular section of State Route 287 runs over hills and has many curves with few passing zones. According to plaintiff, both the semi truck and her vehicle passed the ODOT paint truck at some point north of Township Road 169. Apparently, plaintiff subsequently discovered paint on the right side of her vehicle, the

rear bumper, tailgate, both right side wheel wells, mud guards, and right running board. Plaintiff implied the paint damage to her Honda Pilot was proximately caused by negligence on the part of the ODOT personnel in failing to adequately warn her of painting activity on State Route 287. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$418.59, representing paint removal expenses. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim. Plaintiff submitted photographs depicting white paint splatter on various areas on the body of her vehicle.

{¶ 2} Defendant acknowledged ODOT personnel were painting white edge lines on State Route 287 between mileposts 0.00 to 12.60 on May 27, 2009. Defendant located plaintiff's incident at some point between mileposts 2.00 to 3.57. Defendant explained three trucks were involved in the painting operation which is classified as "a moving work zone that comes under the authority of the Manual of Traffic Control for Construction and Maintenance Operations (Manual)." Defendant insisted all traffic control requirements mandated by the Manual were observed during the course of the edge line painting. Defendant pointed out the "traffic control that was in effect for the paint operation in question included the paint striper and two follow trucks" along with "Wet Paint" signs and orange cones placed throughout the painting area on State Route 287. Defendant further explained that during a moving painting operation the first trail vehicle stops at every intersection and positions traffic control cones on either side of the intersecting road. Defendant suggested plaintiff acknowledged she witnessed this procedure in the narrative she recorded in her complaint. Defendant contended all Manual mandated traffic control was observed during the course of the painting operation and all safety precautions were in place to advise motorists of the painting activity. Defendant further contended ODOT did not breach any duty of care owed to motorists such as plaintiff when conducting the May 27, 2009 painting operation.

{¶ 3} Defendant submitted written statements from the three ODOT employees working the painting project; Doug Snider, the paint striper operator, Mark Hovatter, driver of one trail vehicle, and Dan Noffsinger, driver of another trail vehicle. Snider wrote he observed a "black vehicle when it drove around to make a pass on the striper truck" and noticed the vehicle had white paint on it "especially the tires and wheel wells." Snider expressed the opinion the black vehicle had been traveling over wet paint for an

extended period. Snider reported all traffic control warning signs and advisory signs were operating on the striper truck. Snider explained the two trail vehicles (pick-up trucks) are equipped with strobe lights and warning signs and the first trail vehicle behind the striper “sets out orange traffic control cones on the wet edgeline.” Snider further explained the second trail vehicle “waits until the paint has dried and picks up the cones.” Hovatter related all warning and advisory signage was in place on all three vehicles involved in the painting operations. Noffsinger, in his statement, related all the ODOT vehicles “had wet paint signs on them.” Noffsinger noted he observed around milepost 4 and 6 on State Route 287 “a dark colored Acadia come around a hill and up behind my vehicle.” Noffsinger stated he then “waved (her) around my truck and she passed my vehicle.”

{¶ 4} Defendant contended plaintiff’s own driving actions caused the paint damage to her vehicle asserting she “knew of the paint operation and did not heed the warning devices of the striping operation.” Defendant further contended plaintiff has failed to offer evidence to establish her damage was attributable to conduct on the part of ODOT personnel.

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 the 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 striper 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 conducting the painting operation, or that there was any negligence on the part of defendant in regard to providing proper notification. *Roe v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2008-09872-AD, 2009-Ohio-3579; *Layfield v. Dept. of Transp.*, Ct. of Cl. No. 2008-10692-AD, 2009-Ohio-3776. 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:

Mary A. Beach
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East Liberty, Ohio 43319

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RDK/laa
9/18
Filed 10/6/09
Sent to S.C. reporter 1/29/10