

[Cite as *Baldwin v. Ohio Dept. of Transp.*, 2017-Ohio-8098.]

LISA M. BALDWIN

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION, et al.

Defendants

Case No. 2016-00156

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} This case arises out of a motor vehicle collision involving plaintiff's sports utility vehicle (SUV), and a snow plow operated by Kenneth Watkins, an employee of defendant, Ohio Department of Transportation (ODOT). The collision occurred at approximately 4:30 a.m. on March 2, 2014, in the southbound lane of Interstate 71 (I-71), in Jefferson, Ohio. In the vicinity of the accident, southbound I-71 is a two-lane roadway that is separated from the northbound lanes by a median.

{¶3} Plaintiff asserts that she was driving her vehicle in the right lane when the snow plow suddenly veered right from the left lane and struck her vehicle. As a result of the impact, plaintiff sustained personal injury and damage to her vehicle. Defendant contends that the accident was caused by plaintiff's failure to maintain an assured clear distance from the ODOT truck.

{¶4} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77

(1984). Generally, with regard to the operation of motor vehicles, negligence is the failure to exercise ordinary care or the failure to perform an act required by law. 8 Ohio Jurisprudence 3d (1978) Automobiles and Other Vehicles, Section 448.

{¶5} Plaintiff testified that on the morning of the accident, she was returning to her home in Mason, Ohio, following a job interview. Plaintiff stated that she was well rested when she began her drive home from Charlotte, North Carolina, a trip she had made many times before. According to plaintiff, she was travelling in the right lane and nearing her destination when it began to sleet and she turned on her windshield wipers. Plaintiff testified that she was alert and not distracted when she suddenly saw only “the rear lights” of the salt truck as it began to move from the left lane into her lane of travel. Plaintiff related that she had no opportunity to apply her brakes or maneuver her vehicle before it collided with the rear end of the truck. Plaintiff testified that she was unconscious for a period of time after the accident and that she sustained serious injuries as a result of the crash.

{¶6} During cross examination, plaintiff testified that she did not see the salt truck at any time until just before the accident. Specifically, plaintiff denied seeing any strobe or flashing lights on the truck. According to plaintiff, there was good visibility even though it had been lightly sleeting for approximately 10 to 15 minutes at the time of the crash.

{¶7} Plaintiff’s expert, Ethan Parker, is a civil engineer who provides consulting services in a number of areas, including structural analysis and accident reconstruction. Parker investigated the accident following a review of the Ohio State Highway Patrol (OSHP) accident report and photographs that were obtained from both ODOT and OSHP. (Plaintiff’s Exhibits 1-3.) Parker testified that he performed calculations to determine the speed and position of the vehicles at the time of the accident. Parker opined that plaintiff’s vehicle was less than 2,000 feet behind the salt truck when the truck entered the southbound lanes of I-71 from the median crossover. Based upon his

investigation, Parker opined that damage to both vehicles showed that the salt truck's left tires were still in the left lane when the crash occurred. According to Parker, the photographs also showed both "tearing" of the vehicles' structure and intrusion into the passenger compartment of the SUV, both of which rendered standard available crash data unreliable. Parker testified that the severity of the impact caused the SUV to "underride" the frame of the salt truck, which further complicated reconstruction analysis. As a result of his investigation and analysis, Parker concluded that the salt truck was in the process of moving into the right lane when the vehicles collided. Parker explained that his analysis was consistent with the debris field on the highway, including the path of salt that spilled from the truck after the crash.

{¶8} OSHP Trooper Britney Noah testified that she was assigned to investigate the accident and she completed a traffic crash report which includes photographs of the accident scene, statements from plaintiff and Watkins, and a narrative based upon those statements and Noah's observations. Noah's report also includes a diagram of the accident scene that shows the accident occurred just south of the milepost 59 crossover from the northbound lanes. (Plaintiff's Exhibit 1.) Noah recalled that the "power unit" on the salt truck, which controlled strobe lights and other exterior lights, was damaged such that those lights were not operational after the crash. However, Noah testified that Watkins informed her that the lights had been working at the time of the accident. Noah also obtained a statement from plaintiff wherein plaintiff related that she did not recall seeing strobe lights on the truck. Noah testified that the posted speed limit on I-71 in the vicinity of the accident was 70 mph. She recalled that the road was wet when she arrived at the scene and that some ice was beginning to form, but she had no reason to believe that the road was icy when the crash occurred. Trooper Noah testified that she concluded that both vehicles were traveling in the right lane when the SUV struck the back of the salt truck. Based upon the statements that were provided and her observations of the evidence, such as tire marks and the resting position of the

vehicles, Trooper Noah charged plaintiff with failing to maintain an assured clear distance.

{¶9} Kenneth Watkins testified that at the time of the crash, he was employed by ODOT as a highway technician 4 and he was assigned to operate the salt truck to clear the right lane of southbound I-71. Watkins stated that he inspected the exterior lights on the truck prior to beginning his shift and that only one of the four strobe lights was not operating, a rear-facing, “cat’s eye” strobe light. In addition to the three operating strobe lights, there were four-way flashing lights (four on the front and four on the rear), and a “sanding light” on the rear of the truck that illuminated the salt dispenser. Watkins described a variety of individual light reflectors and reflective decals which were positioned on each side of the truck to enhance its visibility.

{¶10} Watkins testified that he had activated all the lights on the salt truck and that he remembered seeing the flashing of the strobe lights reflecting off of nearby signs as he traveled through the median crossover before entering the southbound lanes of the highway. Watkins stated that he looked for approaching traffic and observed two vehicles travelling southbound which were approximately one mile away when he drove onto the roadway, immediately crossing the left lane into the right lane. Watkins recalled looking at the left rear-view mirror and watching salt being dispensed from the truck onto the roadway, which was illuminated by the sanding light. According to Watkins, the truck was travelling in the right lane at 25 mph, the recommended speed for applying salt, when the truck was struck by plaintiff’s vehicle. Watkins testified that the crash forced the truck into the left lane, whereupon he steered the truck back to the right and applied the brakes as the truck skidded to a stop a few feet from a ditch that is located to the right of the roadway.

{¶11} After the accident, Watkins briefly talked to two individuals who were attending to plaintiff, who was trapped in her SUV. Watkins was informed that “help was on the way.” Watkins testified that the salt truck was severely damaged and that

he observed that the Pengwyn brand control unit which operated, among other things, the salt dispensing mechanisms and the lights on the truck, was inoperable. Watkins explained that at the time of the crash he was monitoring the distribution of salt from the truck and that he did not observe plaintiff's vehicle approaching before it struck the rear of the truck.

{¶12} Douglas McLaughlin, a training supervisor for ODOT, testified regarding ODOT's salt truck operations and training. McLaughlin stated that when a plow is attached to the salt truck, the speed of the vehicle should not exceed 25 mph. ODOT's "Snow and Ice Refresher" training manual states that the proper speed for "normal operations" for a front mounted plow is "at or around 25 [mph]." (Defendant's Exhibit F, p. 11.) McLaughlin explained that ODOT drivers are trained to travel at 25 mph when spreading salt and that a faster speed would negatively impact proper salt distribution by causing salt to bounce or roll off of the travelling lanes. McLaughlin related that ODOT salt truck operators are required to perform a pre-trip inspection of the vehicle, including an inspection of the exterior lights. McLaughlin identified ODOT's "marking and conspicuity policy" for equipment lighting which provides specific requirements including a "minimum standard of 360 degrees of visibility" when a vehicle is performing snow removal activities. (Defendant's Exhibit C, ¶ 3.) This same standard for vehicle lighting is reiterated in ODOT's Safety and Health Standard Operating Procedure. (Defendant's Exhibit D., p. 14.)

{¶13} Timothy Tuttle, defendant's expert, testified that he was trained by the OSHP in accident reconstruction beginning in 1990 and that he has received additional training and experience performing accident investigations since his retirement from the OSHP. Tuttle testified that he reviewed the available accident information in this case, including the accident crash report, photographs, and several visits to the scene of the accident. Tuttle explained that the damaged vehicles were not available for analysis and that he used specifications for each vehicle to conduct his accident reconstruction.

Tuttle determined the position and alignment of the vehicles at the time of impact based upon the damage to various portions of the vehicles. Tuttle performed both hand calculations and a computer simulation of the accident using a reconstruction program. Tuttle also created a scale diagram of the accident scene, including a plot of the crash debris. Tuttle opined that the salt trail left on the roadway defined the path of the truck after the accident. Tuttle concluded that the damage to the vehicles was consistent with his opinion that plaintiff's SUV collided directly into the rear of the salt truck. Tuttle testified that photographs showing a lack of damage to the right side of the truck were further evidence that the truck was not moving from left to right in front of the SUV at the time of the collision. Tuttle developed two computer simulations which supported his reconstruction calculations and his opinion regarding the movement of the vehicles from impact to final rest.

{¶14} Tuttle explained that he was not satisfied with some of his initial hand calculations, including his initial momentum calculations which were likely unreliable because the salt truck was much heavier than the SUV. Tuttle stated that he used two different computer programs to produce his simulation; one to show the vehicles' path prior to impact and another to recreate the movement after the crash until the vehicles came to a final resting point. Tuttle testified that his analysis showed that the SUV was traveling at 73 mph, assuming that the salt truck was traveling at 25 mph. Tuttle testified that the damage to the vehicles was essentially on one level and that he did not observe any "underride" damage to the SUV. According to Tuttle, Parker's determination regarding the alignment of the vehicles at the time of impact was "completely inaccurate." Tuttle opined that any underride damage to the SUV was so minimal that it was not a significant factor for reconstruction analysis. Tuttle testified that it was important to visit the site of the accident to determine, among other things, the dimension, slope, and contour of the road, as well as how the topography impacted the visibility of the median crossover. Tuttle related that his diagrams of the accident

scene (Defendant's Exhibits G and H) were based upon the physical evidence, his calculations, and the computer simulations.

R.C. 4511.22

{¶15} As an initial matter, the court notes that plaintiff has argued that Watkins violated R.C. 4511.22 by operating the salt truck at an unreasonably slow speed. R.C. 4511.22 provides, in pertinent part:

{¶16} "(A) No person shall stop or operate a vehicle, trackless trolley, or street car at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law.

{¶17} "(B) Whenever the director of transportation or local authorities determine on the basis of an engineering and traffic investigation that slow speeds on any part of a controlled-access highway, expressway, or freeway consistently impede the normal and reasonable movement of traffic, the director or such local authority may declare a minimum speed limit below which no person shall operate a motor vehicle, trackless trolley, or street car except when necessary for safe operation or in compliance with law. No minimum speed limit established hereunder shall be less than thirty miles per hour, greater than fifty miles per hour, nor effective until the provisions of section 4511.21 of the Revised Code, relating to appropriate signs, have been fulfilled and local authorities have obtained the approval of the director.

{¶18} "(C) In a case involving a violation of this section, the trier of fact, in determining whether the vehicle was being operated at an unreasonably slow speed, shall consider the capabilities of the vehicle and its operator."

{¶19} The court has previously rejected this argument regarding the operation of ODOT's maintenance vehicles on a multi-lane highway. "Since there were two lanes available for eastbound traffic, the court finds that defendant's vehicle was not impeding or blocking the normal and reasonable movement of traffic. Therefore, the court finds

that defendant did not violate R.C. 4511.22.” *Smith v. Ohio Dept. of Transportation*, Ct. of Cl. No 2001-09877, 2003-Ohio-2998 (May 23, 2003).

{¶20} As in *Smith*, in this case, there were two lanes available for traffic. Therefore, the salt truck was not impeding or blocking the normal and reasonable movement of traffic on southbound I-71. Accordingly, plaintiff’s argument regarding R.C. 4511.22 is without merit.

R.C. 4511.21

{¶21} A violation of the assured clear distance statute, R.C. 4511.21, constitutes negligence per se. *McQueen v. Perry*, 10th Dist. Franklin No. 12AP-237, 2012-Ohio-5522 ¶ 14. “Violation of the statute and a finding of negligence per se depends on whether there is evidence that the 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, and (4) was reasonably discernible.” *Id.*, citing *Blair v. Goff-Kirby Co.*, 49 Ohio St.2d 5, 7 (1976).

{¶22} “Although the violation of the assured clear distance statute constitutes negligence per se, a finding of negligence is not equivalent to a finding of liability.” *Purcell v. Norris*, 10th Dist. Franklin No. 04AP-1281, 2006-Ohio-1473, ¶ 20. “Rather, ‘such a finding does not preclude a driver from raising any applicable defenses, including comparative negligence and proximate cause.’” *Id.*, quoting *Traver v. Young*, 6th Dist. No. L-98-1390., 2000 Ohio App. LEXIS 66 (Jan. 14, 2000). *See also Smiddy v. Wedding Party, Inc.*, 30 Ohio St.3d 35, 40 (1987).

{¶23} Additionally, the common law of Ohio also imposes a duty of reasonable care upon motorists, which includes the responsibility to observe the environment in which one is driving. *Hubner v. Sigall*, 47 Ohio App.3d 15, 17 (10th Dist.1988). “‘Assured clear distance’ is the distance between the car the driver is operating and a reasonably discernable object in the driver’s path of travel.” *Yarmoshik v. Parrino*, 8th Dist. Cuyahoga No. 87837, 2007-Ohio-79, ¶ 29; *see also* R.C. 4511.21(A). With regard

to the elements of the assured clear distance statute, there is no question that the salt truck was ahead of plaintiff's vehicle and moving in the same direction on the highway.

{¶24} Upon review of the evidence, the court finds that the salt truck did not suddenly appear in plaintiff's path and that the truck was reasonably discernable. The court finds that Tuttle's testimony was much more credible and persuasive than Parker's testimony. Parker admitted that he did not perform a reconstruction of the accident and that his investigation was essentially limited to a review of the photographs which were obtained from the OSHP and defendant. Parker did not visit the scene of the accident, nor did he review Watkins' deposition or interview either driver. In contrast to Parker's investigation, Tuttle visited the accident scene several times and observed an exemplar truck that was substantially similar to the salt truck at issue. Since the actual vehicles were not available, Tuttle obtained the specifications for the vehicles involved to accomplish his reconstruction. Tuttle performed an accident reconstruction using both hand calculations and computer analysis to produce diagrams and a computer simulation of the accident to support his opinions.

{¶25} Regarding the path of the salt truck, Tuttle's reconstruction showed that both the debris from the accident and the damage to the vehicles were consistent with a direct rear end collision that occurred entirely in the right lane. Tuttle's analysis and the computer simulation were also consistent with the final resting position of the vehicles. Based upon the greater weight of the evidence, the court finds that the salt truck was travelling in the right lane of the highway at the time of the accident.

{¶26} As to whether the salt truck was reasonably discernable, plaintiff admitted that, although there was some precipitation, the visibility was good at the time of the accident. The court finds that Watkins' testimony that he inspected the lights before he began his shift and that the truck's lights were operational at the time of the accident was credible. Furthermore, there is no plausible explanation why Watkins would choose to operate the truck at a slow speed on the highway, in deteriorating weather

conditions, without functioning safety lights. Even without a system of flashing lights, the multiple lights on the rear of the truck, along with individual reflectors and reflecting decals that were located on each side of the truck, made the truck reasonably discernible and far more visible to motorists than a typical truck. Plaintiff admitted that, at a minimum, the tail lights on the salt truck were operational at the time of the accident.

{¶27} Furthermore, Parker admitted that there were no known impediments to prevent plaintiff from seeing the salt truck. Plaintiff's own expert testified that his calculations showed that plaintiff had approximately 25 seconds to observe the salt truck from the time it pulled away from the median crossover until the vehicles collided. The court concludes that the greater weight of the evidence shows that the salt truck was reasonably discernible and did not suddenly move in front of plaintiff's vehicle before the crash.

{¶28} Upon review of the evidence, the court finds that plaintiff negligently failed to maintain an assured clear distance and collided with the salt truck which was, at all times relevant, ahead of her, reasonably discernible, and moving in the same direction on I-71. The court concludes that plaintiff's negligence was the sole, proximate cause of the accident. Based upon the totality of the testimony and evidence, the court finds that plaintiff has failed to prove by a preponderance of the evidence that ODOT's employee was negligent. Accordingly, judgment is recommended in favor of defendant.

{¶29} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely*

and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

ANDERSON M. RENICK
Magistrate

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