

[Cite as *Eagle Transport & Logistics, L.L.C. v. Office of Risk Mgt.*, 2021-Ohio-4648.]

EAGLE TRANSPORT AND LOGISTICS,
LLC.

Plaintiff/Counter Defendant

v.

OFFICE OF RISK MANAGEMENT

Defendant

and

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant/Counter Plaintiff

v.

ABDULLAHI G. DUBOW

Counter Defendant

Case No. 2019-01163JD

Judge Patrick E. Sheeran

DECISION

{¶1} In the early morning of February 1, 2019, around 1:00 a.m., a tractor-trailer leased by Plaintiff and Counter Defendant Eagle Transport and Logistics, LLC (Eagle Transport) collided with a snowplow owned and operated by Defendant and Counter Plaintiff Ohio Department of Transportation (ODOT)¹ on Interstate 70, near Cambridge Ohio. There is a great deal of disagreement on the cause of the collision. Eagle Transport and Counter Defendant Abdullahi Dubow (Dubow)—the driver of the tractor-

¹ Defendant Office of Risk Management is responsible for Ohio's self-insured motor vehicle liability program pursuant to R.C. 9.83.

trailer—claim that the ODOT snowplow cut Dubow off by turning in front of him. However, ODOT asserts in its counterclaim that Dubow hit the snowplow from behind.

{¶2} The Court held a trial on the issues of liability and damages. Neither side called an accident reconstruction expert to testify. For the reasons that follow, this Court finds in favor of Eagle Transport and Dubow, who, by a preponderance of the evidence, proved the claim that ODOT was more likely than not to have been the negligent party.

Law

{¶3} In order for a plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant's acts or omissions resulted in a breach of 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 Prods., Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984). The common law of Ohio 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, 546 N.E.2d 1337 (10th Dist.1988). Additionally, R.C. 4511.33(A)(1) provides, in part: "A vehicle * * * shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety."

Summary of Testimony

{¶4} Dubow testified that he was employed by Eagle Transport to drive the tractor-trailer involved in the accident. He testified that he has been a truck driver for almost 6 years. On the night of January 31, 2019, Dubow departed Groveport, Ohio with his tractor-trailer on his way to New Jersey. He had previously driven this route six nights a week for over a month and a half. It was snowing, and there was snow on the

road. Despite the snow, Dubow testified that visibility was good; he could see one to two miles. According to Dubow, he was driving between 45 and 55 mph in the 70-mph speed zone due to the snow. Everyone was driving slow at the time, and he was not driving faster than the other trucks and traffic in his direction.

{¶5} Shortly before 1:00 a.m. on February 1, Dubow saw an ODOT snowplow ahead of him in the right lane. When he was a mile behind the plow, Dubow moved from the right lane into the left lane and slowed down in order to pass the plow. According to GPS data provided by Eagle Transport, Dubow slowed down 19 seconds before the crash, eventually reaching a speed of 40 mph prior to impact. Dubow testified that, while he was passing the snowplow, the ODOT vehicle suddenly cut him off by making a left turn from the right lane. The snowplow collided with the right side of his tractor-trailer. Because the snowplow was slightly ahead of him, the snowplow went across the front of Dubow's tractor. The tractor made contact with the front left side of the snowplow. After the collision, the tractor of Dubow's tractor-trailer was in the median crossover, but the trailer of his tractor-trailer mostly remained in the left lane.

{¶6} Dubow testified that he tested negative for drugs and alcohol after the accident.² His tractor-trailer was towed, and he stayed the night in a hotel. (Plaintiff's Ex. 4.)³ During cross-examination, Dubow reaffirmed that he was driving in the left lane—not off the road or in the median crossover—when the impact occurred. He also reaffirmed that the accident happened in the left lane. Dubow then testified that he applied his breaks when he was hit, not before the accident.

{¶7} Dubow identified the written statement that he provided to the highway patrol trooper who responded to the accident. (Plaintiff's Ex. 1.)⁴ He also identified

² Dubow identified Plaintiff's Ex. 5, originally marked as Plaintiff's Ex. L, in support of this statement, but the picture of the drug test contained in the exhibit was entirely illegible.

³ Plaintiff's Ex. 4 was originally marked as Plaintiff's Ex. K.

⁴ Plaintiff's Ex. 1 was originally marked as Plaintiff's Ex. G.

several photographs of the accident, contained in Plaintiff's Exhibits 2 and 3.⁵ Exhibit 2 shows the front of the tractor-trailer on the right up against the side of the snowplow on the left. Another photograph shows the damage to the front of the tractor. Part of the passenger side of the engine of the tractor, from the front of the tractor to the windshield, is torn open and missing. While the front bumper is almost entirely gone, there appears to be no direct damage to the center and driver's side of the front grill, assuming that the manufacturer's logo is in the center of the grill. There is also no visible damage to the passenger door of the tractor cab.

{¶8} Exhibit 3 contains various pictures of the tractor-trailer and the snowplow that were taken while the vehicles were still in contact after the crash. By the time the vehicles came to a rest, the damaged passenger side of the tractor was no longer in contact with the snowplow. Instead, the front of the tractor is up against the side of the snowplow. The dump-truck-like bed of the snowplow is raised as though to distribute salt onto the road. The point of contact on the snowplow is behind the cab of the plow, where part of the truck bed would sit if it were not in a raised position.

{¶9} Exhibit 3 also contains a picture taken from behind (i.e., west of) the accident. There are no streetlights illuminating the highway. The lights on the plow are visible, as is the ODOT symbol on the driver's door. A no U-turn sign is visible, which is presumably in the center of the median crossover. The back of another sign is also visible, likely the no U-turn sign for the westbound highway, which is also presumably in the center of the median crossover. The headlights of the snowplow are a few feet south of the U-turn signs—closer to the eastbound lanes in which the vehicles had been driving. The grass of the median is visible, poking up through the snow, in the left-bottom corner of the picture.

⁵ Plaintiff's Ex. 2 was originally marked as Plaintiff's Ex. C. Plaintiff's Ex. 3 was originally marked as Plaintiff's Ex. S.

{¶10} Mahamed Keyse, the CEO and president of Eagle Transport, testified that his company conducts an internal review of accidents. In conducting that review, the company examines the trucks' in-cab data, Samsara data such as GPS data, accident reports, an interview of the driver, incident report, and drug and alcohol testing. Keyse testified that Samsara is a company that tracks the GPS data of the company's tractor-trailers and its drivers' driving habits. Samsara automatically alerts the company when incidents occur, including accidents, hard brakes, illegal U-turns or too-fast turns, or when a driver strays outside of the route. Keyse testified that Samsara ranks their drivers from best to worst and that Dubow was one of the company's safest drivers at the time of the accident.

{¶11} Keyse identified a screenshot of the Samsara incident report. (Plaintiff's Ex. 9.)⁶ The report contains a map from Google Maps with a blue line showing the line of travel of the tractor-trailer, the location of the tractor-trailer when the crash incident was detected by Samsara, and the place where the tractor-trailer came to a stop. Keyse explained that the Samsara device is located in the left side of the tractor's cab, a few feet in front of the driver's feet. He testified that the system records location data every five or six seconds. The blue line is thus not the vehicle's exact line of travel; rather, Keyse testified, the blue line is a trend, connecting the dots from the snapshots of data. The blue line on the map begins with Dubow driving the tractor-trailer in the right lane of a two-lane highway, I-70 East. The vehicle then moves into the left lane. Shortly before the crash, the blue line begins to veer off of the highway to the left. The line terminates in the crossover area where the tractor came to a stop after the accident. The location of the collision is marked by a yellow exclamation point.⁷ The exclamation point is not

⁶ Plaintiff's Ex. 9 was originally marked as Plaintiff's Ex. B.

⁷ Specifically, the exclamation point denotes where the GPS system recognized a significant enough impact to register the accident.

on the blue line. Instead, it is closer to the road. According to the data printout of the periodically recorded locations, locations were recorded 4 seconds prior to the accident and 2 seconds after the accident, but no location was recorded at the moment of impact. Keyse testified that the GPS data shows that the tractor-trailer was in the left lane when the impact occurred.

{¶12} The Samsara incident report also provides—at each 5-6 second interval—the speed, heading, street location, and latitude and longitude for the tractor. According to the report, the accident occurred at 12:58:17 a.m. in a 70-mph speed limit zone. Between 56 seconds and 30 seconds prior to the accident, the tractor-trailer maintained a speed in between 52 and 54 mph. Sometime between 30 seconds and 24 seconds prior to the accident, the vehicle began to slow down, decelerating from 53 mph to a speed of 44 mph 9 seconds prior to the accident. Between 9 seconds and 4 seconds prior to the accident, the vehicle decelerated more rapidly, from 44 mph to 40 mph. A speed is not recorded at the moment of impact, but 2 seconds after the accident, the tractor-trailer was still moving at a speed of 6 mph. The vehicle came to a complete stop before the next location was recorded at 8 seconds after the accident.

{¶13} The heading of the tractor—the direction in which it was traveling—also changed abruptly at the time of the accident. At 4 seconds prior to the accident, the heading of the tractor cab was 75 degrees (i.e., slightly north of due east).⁸ At 2 seconds after the accident, the heading was 25.6 degrees. At 8 seconds after the accident, by which time the tractor-trailer had come to a complete stop, the heading was 0 degrees (i.e., north).

{¶14} Keyse testified that Dubow was familiar with the route he was driving the night of the accident and had previously driven it overnight. Dubow had been driving that route for six weeks at the time of the accident. Keyse testified that no corrective action was

⁸ A heading of 0 degrees is north, and 90 degrees is east.

taken against Dubow because the company's internal investigation, which included the police report and Samsara data, indicated that he was not at fault.

{¶15} During cross-examination, Keyse testified that Samsara put the blue line and yellow exclamation point on Exhibit 9. He did not know whether there was any debris from the accident in the roadway or if all of the debris was off of the road.

{¶16} Ohio State Highway Patrol Trooper Stephen Wagers testified that it took him over 15 minutes to arrive to the accident after he was dispatched due to the snow. He identified for the Court the crash report that he wrote in his investigation. (Defendants' Ex. A.) A sergeant and another trooper were also at the scene. When Wagers arrived, the tractor-trailer was partially off the left side of the road, up against an ODOT snowplow. The right half of the trailer was still in the left lane, and 90% of the snowplow was in the crossover area. Wagers testified that he saw debris in the left lane and the median, but none in the right lane. From his review of the crash scene, Wagers determined that it was an assured clear distance crash—the semi-truck rear ended the snowplow. He also testified that the tractor-trailer had driven off the left side of the roadway before impacting with the snowplow. Accordingly, he cited Dubow and did not cite the ODOT driver.⁹

{¶17} During cross-examination, Wagers was shown the photographs of the damage to the front of the tractor-trailer. He admitted that the photographs—which show damage to the right front side and no damage to the left front side—were inconsistent with the diagrams that he constructed in his crash report. The crash report diagram of the accident shows the front-left corner of a tractor-trailer colliding with the rear-left corner of a snowplow after the snowplow has almost entirely entered the median crossover.

⁹ Keyse testified during cross-examination that the charge against Dubow was dismissed by a judge.

{¶18} Nathan Mack, a transportation manager 3 for ODOT, oversees the garage that repaired the snowplow involved in the accident. Because the Court rules in favor of Eagle Transport, the Court will not discuss the cost of repairs to ODOT's snowplow in detail. However, during cross-examination, Mack testified that all of the damage was done to the left side of the ODOT truck, including damage to the left rear tire.

{¶19} Shad Watkins was driving the ODOT snowplow involved in the accident. He testified that he began working for ODOT in 2016. Watkins testified that he worked the midnight to noon shift on the night of the accident. He remembered that the weather was really bad, with the area receiving a total of four to six inches of snow overnight. Watkins testified that he always plows the same route, which consists of 20 lane miles of highway between the eastbound lanes, the westbound lanes, and the exit ramps. The snowplow driver before Watkins was not familiar with that route, so there was a lot of snow accumulation before Watkins began plowing.

{¶20} Watkins explained that he always plows the right lane first, and then he plows the left lane. He testified that on the night of the accident, he came up onto the highway off the ramp and into the right lane. He then switched into the left lane and plowed the left lane. He was both plowing and salting at the time of the accident. Accordingly, he testified that he was driving about ten or twelve mph, perhaps up to fifteen mph. He was in the left lane when he approached the crossover. Watkins turned into the taper (the turn off) and raised his plow in order to enter the median crossover.

{¶21} Watkins testified that he saw the tractor-trailer behind him in the right lane. The tractor-trailer then transferred to the left lane, behind the snowplow. He explained that when people drive in the snow with low visibility, they have a tendency to follow the lights in front of them. The plow has lights all over it, blinking to alert the public. As Watkins approached the taper, he saw the tractor-trailer coming towards him—following

him into the taper—and Watkins knew that he was going to be hit. After they came to a stop, the nose of the tractor was wedged under the raised bed of the plow.

{¶22} Watkins testified that, after the accident, Dubow jumped out of his truck and accused Watkins of not signaling that he was going to turn. Watkins also testified that Dubow did not cooperate with the trooper who responded to the accident. Watkins related that it was snowing so bad that snow was beginning to cover the road again while his plow was out of commission. Therefore, after the wrecker dislodged the tractor-trailer from his snowplow, he drove his damaged snowplow back to the shop, switched snowplows, and returned to plowing.

{¶23} Watkins identified several of Defendants' exhibits as pictures that were taken of the accident. Exhibit B is a picture that is also contained in Plaintiff's Exhibit 3, described above. Defendants' Exhibit C is a picture of the left side of the tractor-trailer, zoomed in mostly on the tractor. The raised bed of the plow is partly visible above the tractor's engine. Defendants' Exhibit D is a picture of the front of the left side of the snowplow. The plow itself is partly visible. Defendants' Exhibit E is a picture of the accident taken from in front of the snowplow. Watkins testified that the pictures show that the plow is aimed to the left, as though to plow the left lane. To a lay person's eye, it looks like the plow may be somewhat aimed to the left.

Findings of Fact Regarding the Accident

{¶24} Based upon the evidence presented at trial, the Court finds that the weight of the evidence supports Eagle Transport and Dubow's version of events. First, the Court will note the testimony of the two chief witnesses, Dubow and Watkins. For several reasons, the Court found the testimony of Dubow to be more credible than that of Watkins. First, Watkins' description of the snowfall and the visibility that night was in considerable contrast to the physical evidence and the testimony of the other witnesses at the scene. It is also in contrast to the incontrovertible actions of Dubow, who slowed his vehicle down from a maximum speed of 54 mph to 40 mph in the 51 seconds before

impact, with most of the reduction occurring in the 30 seconds before impact. While ODOT argues that this was not *enough* of a decrease, it is clear the reduction is in response to what Dubow can see as he proceeds eastbound on the Interstate. And what he can see includes the snowplow.

{¶25} Next, the demeanor of the two main witnesses at the accident scene is telling as well. Dubow immediately stated to Watkins that Watkins had cut him off. Watkins agrees that this is what Dubow said, and the statement given by Dubow to the OSHP officer—although it did not (by that time) constitute an excited utterance—was nonetheless also in accord with his first statements to Watkins, which did constitute an excited utterance. And this Court notes that Watkins, as a witness, was no “shrinking violet.” In short, the Court did not have the same level of confidence in the testimony of Watkins as it had in Dubow’s testimony. In addition, Dubow is clearly much more of a professional driver than Watkins is. And as noted above, Watkins clearly overstated the amount of snow on the ground. The photographs of the scene are in marked contrast to Watkins’ testimony. For example, Defendants’ Exhibit B shows not only exposed grass on the lower left-hand side, but also footprints in the snow that clearly are nowhere near 4-5 inches in depth. See also: Defendants’ Exhibits F, G, H, I, and L.

{¶26} A preponderance of the evidence also supports the assertion that Watkins caused the accident. The damage to the tractor portion of the tractor-trailer supports this. (Plaintiff’s Exhibit 2.) The damage is almost exclusively to the right side of the tractor. Furthermore, the damaged side of the tractor is no longer in contact with the snowplow. (Plaintiff’s Ex. 3.) Instead, the snowplow is in contact with the front of the tractor. This indicates that the side of the tractor made contact with the snowplow first, not the front of it—which is much more consistent with Dubow’s testimony that the snowplow turned in front of the tractor-trailer than it is with Trooper Wagers’ testimony that the accident was due to Dubow’s failure to maintain an assured clear distance. While this Court did not have a great deal of confidence in Trooper Wagers’ testimony

taken as a whole, he did not hesitate to change his mind if shown to be in error. And he clearly was in error regarding his diagram of the accident; said accident could not have happened as depicted there. In short, this was not the normal assured clear distance accident.

{¶27} The second piece of evidence that supports this conclusion is the Samsara data. This Court finds that the Samsara composite GPS image evidence—contained within Plaintiff’s Exhibit 9—is, on the whole, inaccurate, although it does provide some assistance to the Court when compared with Plaintiff’s Exhibit 3. But the speed and heading data from Samsara in Plaintiff’s Exhibit 9 (Bates numbers 00004 and 00005) are credible. As described above, the speed data showed that even though the tractor-trailer slowed down prior to the collision, it continued moving for at least a few seconds and at least 17.6 feet after impact.¹⁰ The Samsara heading data shows that the tractor of the tractor-trailer turned sharply left, by 75 degrees, after the impact.

{¶28} The final position of the vehicles shown in Exhibit 3 is to the right (south) of the middle of the crossover. Given the amount of movement that occurred after the collision, and the leftward (i.e. northward) movement of the trucks after the collision, it is more likely than not that the collision occurred in the passing lane or just outside of it, which is consistent with Dubow’s testimony that the snowplow cut him off by turning in front of him. The change in the heading of the tractor also strongly corroborates that the snowplow turned in front of the tractor-trailer. The Court finds this is so by a definite preponderance of the evidence.

{¶29} Note that the position of the blue line on the Interstate is NOT in accordance with the photographs in Plaintiff’s Exhibit 3. While 50% of the trailer is in the left lane in the photo, the blue line has the tractor-trailer completely off the road as it reaches the point

¹⁰ Because the tractor-trailer was rapidly decelerating after the collision—and the speed of 6 mph was taken 2 seconds after the collision—the forward movement was greater than 17.6 feet.

of impact, and after that wholly in the median. Since this is, objectively, a complete impossibility, the blue line has NO credence in terms of positioning the tractor-trailer left of the passing lane. If anything, the blue line continuum, corrected to the action position of the truck shown in Plaintiff's Exhibit 3, would *in fact* place the tractor-trailer in the right-hand lane as it is proceeding eastbound on I-70, then moving into the left-hand lane as it approaches the snowplow—which is entirely consistent with the testimony of Dubow. If the yellow alert symbol that Keyse testified marks the location of the accident were similarly corrected, it would be in the left passing lane, which is also consistent with Dubow's testimony. The Court notes that the Samsara positional inaccuracy is one reason why Keyse installed cameras on his company's trucks.

{¶30} In addition to Watkin's testimony, ODOT argued that the left-facing position of the plow blade on the snowplow is compatible with someone who is plowing the driving lane of snow on the Interstate. So far as it goes, that is true. However, looking at the angle of the blade relative to the snowplow (as shown in Defendant's Exhibit E), the blade is only *slightly* tilted to the left. When one considers that the stated intent of Watkins was to cross the paved median and plow the left side (passing lane) of I-70 westbound, it is plausible that he was in the process of changing the angle of the snowplow's blade while proceeding from the eastbound lane and crossing the median. Plausible may be synonymous with speculation, to be sure, but the position of the blade in the photograph is not automatically, or at least not exclusively, compatible with plowing the passing lane of I-70 eastbound. As a result, the Court gives very little weight to that photograph.

{¶31} As discussed above, a preponderance of the evidence leads the Court to the conclusion that Watkins, the driver of the ODOT snowplow, caused the accident by turning in front of the tractor-trailer.

Damages

{¶32} Keyse testified that the truck that was damaged was leased through Ryder and identified Plaintiff's Exhibit 6¹¹ as the lease. Pursuant to the lease, Eagle Transport is responsible for all physical damage to the vehicle. (Plaintiff's Ex. 6, p. 3, 7.) Keyse further testified that the tractor was considered a complete loss due to the damage from the accident. Eagle Transport paid Ryder a total \$71,258.06 via installment payments for the tractor. (Plaintiff's Exhibits 7, 8.)¹² Eagle Transport also continued to make monthly lease payments for the damaged tractor for four months, for a total of \$8,332.00. (Plaintiff's Ex. 6.)

{¶33} Keyse's testimony and the exhibits presented, Plaintiff's Exhibits 10 and 11¹³, show that Eagle Transport paid a total of \$4,565.18 in towing expenses. Eagle Transport also paid \$18,136.32 to rent another tractor from Ryder for 83 days in order to complete the contract for the route that Dubow was driving at the time of the accident. (Plaintiff's Ex. 12.) Eagle Transport also reimbursed Dubow for the drug test and hotel room after the accident, for a total of \$196.24. (Plaintiff's Exhibits 4 & 5.)

{¶34} ODOT did not contest any of Eagle Transport's evidence regarding damages. Upon review of the evidence, the Court concludes that Eagle Transport should be awarded \$102,487.80 in damages.

¹¹ Plaintiff's Ex. 6 was originally marked as Plaintiff's Ex. BB.

¹² Plaintiff's Ex. 7 was originally marked as Plaintiff's Ex. D. Plaintiff's Ex. 8 was originally marked as Plaintiff's Ex. I.

¹³ Plaintiff's Ex. 10 was originally marked as Plaintiff's Ex. CC. Plaintiff's Ex. 11 was originally marked as Plaintiff's Ex. M.

Conclusion

{¶35} After considering all of the evidence presented, the Court concludes that the driver of the ODOT snowplow caused the collision between the snowplow and tractor-trailer by turning in front of the tractor-trailer. Accordingly, the Court rules in favor of Eagle Transport on all claims. The Court also rules in favor of Abdullahi Dubow on ODOT's negligence claim. Judgment shall be rendered in favor of Eagle Transport in the amount of \$102,512.80, which includes the filing fee paid by Eagle Transport.

PATRICK E. SHEERAN
Judge

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ABDULLAHI G. DUBOW

Counter Defendant

Case No. 2019-01163JD

Judge Patrick E. Sheeran

JUDGMENT ENTRY

{¶36} This case came to trial before the Court on the issues of liability and damages. For the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of Plaintiff and Counter Defendant Eagle Transport and Logistics, LLC (Eagle Transport) on its negligence claim in the amount of \$102,512.80, which includes the filing fee paid by Eagle Transport. Judgment is rendered on behalf of Eagle Transport and Counter Defendant Abdullahi Dubow on Defendant and Counter Plaintiff Ohio Department of Transportation's negligence claim. Court costs are assessed

against Defendants. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge

Filed November 3, 2021
Sent to S.C. Reporter 1/19/22