[Cite as *Sobczak v. Ohio Dept. of Transp.*, 2010-Ohio-3324.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Victoria L. Sobczak,	:	
Plaintiff-Appellant,	:	No. 09AP-388 (C.C. No. 2004-08324)
v.	:	(REGULAR CALENDAR)
Ohio Department of Transportation,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on July 15, 2010

Colley Shroyer & Abraham, LPA, and *Daniel N. Abraham*, for appellant.

Richard Cordray, Attorney General, *William C. Becker* and *Daniel R. Forsythe*, for appellee.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶1} Plaintiff-appellant, Victoria L. Sobczak ("appellant"), appeals from the judgment of the Court of Claims of Ohio, in which that court granted summary judgment in favor of defendant-appellee, Ohio Department of Transportation ("appellee"), as to appellant's claim for negligence.

{¶2} The relevant facts of this case are not in dispute. On August 19, 2002, appellant sustained serious bodily injury as a result of an automobile accident in which

she lost control of her vehicle while traversing the entrance ramp ("the ramp") from Monroe Street to U.S. Route 23 in the city of Sylvania in Lucas County, Ohio. Appellee designed and built the ramp in the 1950's in accordance with design requirements in place at the time. Appellee has not redesigned or reconstructed the ramp since it was originally built.

{¶3} The ramp has been the site of many accidents since it was built. Gerald Sobb, Chief of Police for the city of Sylvania, testified that he wrote letters to appellee at least three times since the mid-1980's, in which he asked that appellee install a rigid barrier in order to alleviate the hazardous nature of the ramp. In addition, Sylvania Mayor, Craig Stough, sent appellee a letter in 1997, in which he requested that appellee conduct a comprehensive study of the location with a view to installation of a rigid barrier to guide motorists around the final curve of the ramp and to prevent out-of-control vehicles from entering the southbound lanes of U.S. Route 23. As noted earlier, appellee never took any action in response to these letters.

{¶4} According to Mayor Stough, appellee made it clear to him that it alone had the power to make changes to the ramp and that the city of Sylvania was not permitted to do so. Sylvania Service Director, Jeffrey Ballmer, shared the opinion that only appellee is responsible for any redesign or reconstruction of any features of the ramp. Indeed, the city of Sylvania passed an ordinance in 1974 expressly giving its consent for appellee "to perform all necessary maintenance and repair operations * * * on State Route US 23 and contiguous ramps * * * within the corporate limits of the CITY [of Sylvania]." (Sylvania Ordinance 21-74, 1.) The city of Sylvania passed this ordinance in accordance with R.C. 5521.01, entitled "Establishment and improvement of state highways within municipal corporation" which provides in relevant part:

> The director may establish, construct, reconstruct, improve, widen, maintain, or repair any section of state highway within the limits of a city, including the elimination of railway grade crossings, and pay the entire or any part of the cost and expense thereof from state funds, *but in all cases the director first shall obtain the consent of the legislative authority of the municipal corporation.*

(Emphasis added.)

{¶5} When appellant instituted this action she alleged that appellee was negligent in its original design and construction of the ramp, and for failing to redesign and reconstruct the ramp after being put on notice that the ramp was hazardous. In its motion for summary judgment, appellee argued that it was not negligent in the design and construction of the ramp, and produced evidence that it constructed the ramp in accordance with engineering standards that prevailed at the time of construction. Appellee also argued that, pursuant to established legal precedent, it had no duty to reconstruct and redesign the ramp.

{¶6} Appellant conceded that appellee had constructed the ramp in accordance with then-prevailing design standards. Appellant also acknowledged precedent holding that appellee has no duty to reconstruct ramps to meet current design standards. She argued, however, as she does on appeal, that once appellee was made aware that the ramp had been the site of many accidents, a duty arose for appellee to redesign and reconstruct the ramp.

{¶7} Section 5511.01 of the Ohio Revised Code provides that, with two exceptions not applicable here, "no duty of constructing, reconstructing, maintaining, and repairing such state highways within municipal corporations shall attach to or rest upon the director." In the case of *Wiebelt v. Ohio Dept. of Transp.* (June 24, 1993), 10th Dist. No. 93AP-117, this court relied on this plain statutory language to hold that, while

appellee has a duty to *maintain* all highways under its supervision in a reasonably safe condition,[1] "[a] duty to maintain state highways is distinguishable from a duty to redesign or reconstruct. Maintenance involves only the preservation of existing highway facilities, rather than the initiation of substantial improvements. This court has held that ODOT has no duty to upgrade highways to current design standards when acting in the course of maintenance." Id., citing *Lunar v. Ohio Dept. of Transp*. (1989), 61 Ohio App.3d 143, 149.

{¶8} Though appellant acknowledges this precedent, she proposes that the present case illustrates the need for a balanced approach, in which the duty to redesign or reconstruct in accordance with current design standards is triggered when appellee is put on notice that a particular portion of a highway is extremely dangerous. Appellant argues that she presented evidence demonstrating the existence of a genuine issue of material fact as to whether appellee was put on notice that the ramp from Monroe Street to U.S. Route 23 southbound was extremely hazardous. On that basis, she maintains, we should reverse the trial court's grant of summary judgment. Appellee counters by arguing that the "balance" that appellant proposes is unsound because it provides no workable rule as to what number or degree of seriousness of the accidents at a particular location would trigger the proposed duty.

{¶9} Appellant directs our attention to dicta in the case of *Galay v. Ohio Dept. of Transp*., 10th Dist. No. 05AP-383, 2006-Ohio-4113, that appellant argues, suggests that reported accidents might trigger a duty to reconstruct. In *Galay*, the plaintiff's decedent was killed in a two-car accident at the intersection of two state highways. The plaintiff claimed that appellee was negligent in the design, construction, marking and

[1] *Knickel v. Dept. of Transp*. (1976), 49 Ohio App.2d 335, 339.

maintenance of one of the highways. In determining that the trial court's judgment in appellee's favor was not against the weight of the evidence, we reaffirmed the principle that "ODOT was not under a mandatory duty to redesign or reconstruct the intersection of S.R. 309 and Kenton-Galion Road." Id. at ¶29, citing *Wiebelt*.

{¶10} Later, in dicta concluding a discussion of the appropriate standard of care to be applied to the plaintiff's claim for negligent design and construction, we stated, "[a]bsent a duty to redesign or reconstruct the intersection, and absent any reported accidents at the intersection in a six-year period prior to the accident, which may have provided notice to ODOT about safety issues at the intersection, we cannot conclude that under this case's particular facts and circumstances the Court of Claims erred by failing to find that ODOT breached a duty to maintain the intersection of S.R. 309 and Kenton-Galion Road in a reasonably safe condition." Id. at ¶54. It is this dicta upon which appellant argues that we have suggested that notice of a dangerous condition might trigger the duty to redesign and reconstruct.

{¶11} " 'Dicta' is defined as '[e]xpressions in court's opinions which go beyond the facts before court and therefore are * * * not binding in subsequent cases as legal precedent.' " *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶85 (Sweeney, J., dissenting), quoting Black's Law Dictionary (6th ed.1990) 454. " 'As a dictum is by definition no part of the doctrine of the decision, and as the citing of it as a part of the doctrine is almost certain to bring upon a brief maker adverse comment, lawyers are accustomed to speak of a dictum rather slightingly * * *.' Lile, William M. et al., Brief Making and the Use of Law Books (3rd Ed.1914) 307." *Easter v. Complete Gen. Constr.*, 10th Dist. No. 06AP-763, 2007-Ohio-1297, ¶34. For this reason, the language to which appellant refers carries no persuasive or precedential authority in our analysis.

{¶12} Moreover, we note that the plaintiff in *Galay* never argued that appellee had the duty to *reconstruct* the highway in question – the plaintiff was suing for negligence in the *original* design and construction. Finally, in the same discussion in which the foregoing dicta is found, we again reaffirmed that "[a] duty to maintain state highways is distinguishable from a duty to redesign or reconstruct. Maintenance involves only the preservation of existing highway facilities, rather than the initiation of substantial improvements." Id at ¶52, citing *Wiebelt*. Far from suggesting that notice of a certain number of accidents on a given highway would trigger a duty to reconstruct that highway, we adhered in *Galay* to the statutory and precedential tenet that appellee has no duty to redesign and reconstruct a highway. Neither *Galay* nor any other case has held that notice of accidents at a particular location triggers the duty to redesign and reconstruct a highway, and the General Assembly has not amended the plain language of R.C. 5511.01 since *Galay*.

{¶13} For these reasons, we find appellant's assignment of error not well-taken and the same is overruled.

Judgment affirmed.

TYACK, P.J., and SADLER, J., concur.