

[Cite as *Dumont v. Ohio Dept. of Transp.*, 63 Ohio Misc.2d 335, 1992-Ohio-269.]

IN THE COURT OF CLAIMS OF OHIO

ARLINE DUMONT, et al. :
Plaintiffs : CASE NO. 90-04795
v. : DECISION
OHIO DEPARTMENT OF : Judge Fred J. Shoemaker
TRANSPORTATION :
Defendant :

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Plaintiffs, Arline and Gerald Dumont, allege that defendant, Ohio Department of Transportation, was negligent in the placement and maintenance of detour signs thereby creating a nuisance on I-70 in Franklin County, Ohio.

This action was heard on May 13, 1992, on the sole issue of liability. The court has duly considered the evidence and arguments of counsel and renders the following findings of fact and conclusions of law.

On June 12, 1989, Arline Dumont was driving eastbound on I-70 in Columbus, Ohio, with her husband, Gerald Dumont, as a passenger in the front seat. Mrs. DuMont's initial plan was to enter I-270 north. However, it was closed during construction. Arline Dumont then excitedly asked her husband, who was asleep or

napping at the time, what to do. He told her to go to the next exit on I-70 (Wilson Road) and then return to I-270 north. When

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approaching Wilson Road, Arline quickly turned her vehicle to the right to exit in front of a tractor trailer driven by Mr. Robert Sheppard. Her automobile was struck by the tractor trailer.

Plaintiffs' action is framed as a negligence claim against defendant for the improper placement of signs advising the motorists of a detour. The law of negligence requires the plaintiff to prove by a preponderance of the evidence, the existence of a duty, the breach of that duty, and injury resulting proximately therefrom. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282.

Defendant has a 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. In conforming to this duty, defendant is required to adopt and utilize a manual with specifications for a uniform system of traffic control devices. R.C. 4511.09. Traffic control devices are defined as "signs, signals, markings, and devices placed or erected *** for the purpose of regulation, warning, or guiding traffic, including signs denoting names of streets and highways." R.C. 4511.01. The placement and maintenance of traffic control devices are governed by R.C. 4511.10, which provides that, "[t]he department of transportation may place and maintain traffic control devices, conforming to its Manual and

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specifications, upon all state highways as are necessary ***." Defendant has adopted and currently utilizes the "Ohio Manual of Uniform Traffic Control Devices for Streets and Highways" (Manual), which provides the standard by which defendant is to act when using signs to maintain its highways in a reasonably safe condition. *Woods v. Beaver creek* (1989), 62 Ohio App. 3d 468 (citing *State, ex rel., Ohio Motorists Assn. v. Masters* (1982), 8 Ohio App. 3d 123).

Defendant is required to place signs making the driver aware of construction detours in compliance with the Manual. For plaintiffs to prove by a preponderance of the evidence that defendant breached a duty owed them, plaintiffs must show that defendant failed to comply with the Manual.

Section 2E-1 of the Manual provides for the positioning of signs in pertinent part as follows:

Standardization of position cannot always be attained in practice, because signs must in all cases be placed in the ***most advantageous positions*** and must be accommodated to highway design and alinement. The general rule is to locate signs on the ***right-hand side*** of the roadway, where the driver is in the habit of looking for them ***.
(Emphasis added.)

Section 7B-5 further provides the following:

Signs shall be placed in positions where they will convey their message most effectively and placement must therefore be accommodated to

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highway design and alignment. Signs shall be placed so that the driver will have adequate time for response.

As a general rule signs shall be located on the right-hand side of the roadway ***.

A review of the testimony and evidence presented at the trial on this matter reveals there were no less than three road closed signs and three detour signs placed on the right-hand side of the traveled roadway prior to the location of this accident. All signs were placed in accordance with the standards established by the Manual. Therefore, this court finds that defendant was not negligent in the placement and maintenance of the detour signs.

The court finds that the proximate cause of this accident was the negligence of the plaintiffs by changing lanes without safety thereby causing a collision with a truck traveling in the same direction.

The court concludes that plaintiffs have failed to prove by a preponderance of the evidence that there is any actionable negligence for which defendant is liable. Therefore, the court will render judgment for the defendant.

FRED J. SHOEMAKER
Judge

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Plaintiffs : CASE NO. 90-04795
v. : JUDGMENT ENTRY
OHIO DEPARTMENT OF : Judge Fred J. Shoemaker
TRANSPORTATION :
Defendant :

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This action came on for trial on the sole issue of liability on May 13, 1992. Upon consideration of all the evidence and for the reasons set forth in the decision rendered concurrently herewith, it is ORDERED that judgment is rendered in favor of defendant and against plaintiffs. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

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