



Although there is some question regarding the operation of the sign that morning, it is undisputed that Norris changed the sign to reopen the weigh station within several minutes prior to the incident. When the station was reopened, a truck driven by Thomas Wilcox slowed to allow another truck, marked "Preston," to enter the line of trucks in the right lane in front of Wilcox and behind a truck which was driven by John Jakubiec.

{¶3} Plaintiff was traveling in the left southbound lane at approximately sixty-five miles per hour (mph) when he encountered the slowing Preston truck in the left lane, alongside the tractor-trailer driven by Jakubiec. After passing Wilcox, plaintiff drove his car into the right lane and struck the rear of the truck driven by Jakubiec. As a result of the collision, plaintiff sustained serious injuries; he does not have a recollection of the accident.

{¶4} Plaintiffs claim that defendant negligently caused an unsafe back-up of traffic on I-71 by failing to control traffic at the weigh station, by failing to provide a safe and reasonable procedure for stopping traffic and by failing to provide a safe and reasonable place for traffic to exit. In order for plaintiffs to prevail upon their claim of negligence, they must prove by a preponderance of the evidence that defendants owed them a duty, that they breached that duty, and that the breach proximately caused their injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶5} Plaintiffs' negligence claims involve Norris' performance of his duties as a stationary load limit inspector or "scale master." At the time of the accident, Norris had approximately seventeen years experience working at the weigh station. Norris testified that he received on-the-job training for his position and that his supervisors instructed him on many occasions not to allow trucks to back up onto the highway. Norris explained that he used a mirror that was mounted on a pole located outside of the station building to monitor traffic on the entrance ramp. Norris testified that he would switch the sign to close the weigh station when the last truck on the entrance ramp was beyond his view.

{¶6} The first issue is plaintiffs' assertion that Norris failed to properly operate the weigh station sign at the time of the crash. Norris acknowledged that it was defendants'

policy to operate the sign in a manner that prevented traffic from backing up onto the interstate. However, defendants maintain that the evidence establishes, when the incident occurred, that the ramp was not full and that traffic was not backed up onto the interstate.

{¶7} In support of their position, defendants rely on Norris' testimony about the truck traffic on the entrance ramp at the time of the accident. Norris testified that he had switched the weigh station sign to "closed" for several minutes prior to the crash to allow the traffic on the entrance ramp to clear. Norris stated that the station remained closed until he observed that the road was clear "back to the bridge-overhead" located on the interstate beyond the entrance ramp. Norris testified that he had switched the sign to "open" approximately thirty seconds before he noticed that there was "a problem" on the interstate that had caused all traffic to slow. Norris became aware of the crash through communications on a citizens band radio that he monitored.

{¶8} However, Norris' testimony was inconsistent with the statement that he gave to the Ohio State Highway Patrol on the day of the incident and was contradicted by the statements of other witnesses. Specifically, Norris made conflicting statements regarding the amount of truck traffic that was on the entrance ramp at the time of the crash. The testimony and written statements of Jakubiec, Wilcox and another truck driver, Brett Barnes, all support plaintiffs' assertion that traffic was backed up onto the southbound lane of the interstate at the time of the crash. Both Wilcox and Jakubiec maintained that they were traveling at approximately twenty mph when the crash occurred. Furthermore, William Smentkowski, a truck driver who was in the weigh station building at the time of the crash, testified that traffic was backed up onto the highway. Smentkowski's testimony was based upon his visual observations and radio communications that he heard while inside the weigh station. Smentkowski testified that he heard drivers make radio calls advising Norris that the ramp was full and that slowed traffic had created a hazard on the interstate. According to Smentkowski, Norris mocked the radio calls and turned off the radio after being informed that the crash had occurred.

{¶9} The physical evidence that was documented in the investigation report also supports plaintiffs' contention that trucks were backed up onto the interstate. The photos of the accident scene that were taken by Trooper Robert Bright show that the site of the impact was located on the interstate at a substantial distance from the entrance ramp. (Joint Exhibit B.) The court finds that the testimony and evidence establish that trucks were backed up beyond the entrance ramp to the weigh station as a result of Norris' negligent operation of the open/closed sign. As noted above, Norris was instructed to close the weigh station when the entrance ramp became full. Defendant's expert, Sergeant Toby Wagner, conceded that a line of trucks proceeding from the traveling lane of the interstate onto the entrance ramp at or below twenty mph would constitute a hazard to the motoring public. The court concludes that defendants' employee breached a duty to monitor the truck traffic and to avoid a hazardous back-up on the interstate highway.

{¶10} With regard to the proximate cause of the incident, plaintiffs offered the expert testimony of Douglas Head, a civil engineer qualified in crash analysis and experienced in weigh station design. Head explained that the concepts of speed differential and driver expectancy were important in understanding the cause of the accident and that the foreseeability of a vehicle crash increases when the speed difference between vehicles traveling on a rural interstate is greater than ten mph. Head opined that the twenty mph speed of the trucks driven by Jakubiec and Wilcox was unreasonably slow as a result of the speed differential that existed between those trucks and the other vehicles which were traveling at the posted speed of sixty-five mph. Head also explained that, according to the principle of expectancy, an interstate driver expects that traffic will move continuously at or near posted speeds. Head opined that the forty to forty-five mph speed differential between plaintiff's car and the trucks driven by Jakubiec and Wilcox interfered with plaintiff's expectancy, and that he was unable to react in a timely manner when he encountered the truck driven by Jakubiec.

{¶11} Based upon the evidence and the expert testimony, the court finds that the slowed truck traffic on the interstate in combination with the act of switching the sign from open to closed and then, within a short time, back to open, created a hazard on the interstate. The court further finds that Norris' operation of the switch was negligent and that Norris' negligence was a proximate cause of the accident that caused plaintiffs' injuries.

{¶12} In addition to defendants' negligence, the court finds that plaintiff was also negligent. Pursuant to R.C. 2315.19, plaintiff is barred from recovery if his contributory negligence is greater than that of defendants. The court finds that plaintiff failed to use reasonable care by entering the right lane at the posted speed limit after passing the slower moving truck driven by Wilcox. The testimony and evidence establish that plaintiff did not significantly slow his vehicle prior to changing lanes to avoid the Preston truck. Had plaintiff reduced his speed before he changed lanes, he would have increased the time that he had to react to the unexpected condition and decreased the impact speed of the impending collision. In assessing negligence in this case, the court allocates forty percent to plaintiffs and sixty percent to defendants.

{¶13} Judgment will be entered in favor of plaintiffs in an amount to be determined at a second trial on the issue of damages.

J. WARREN BETTIS  
Judge

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JUDGMENT ENTRY

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