

[Cite as *Weese v. Ohio Dept. of Transp.*, 2002-Ohio-3519.]

IN THE COURT OF CLAIMS OF OHIO

JAMES E. WEESE, et al. :
Plaintiffs : CASE NO. 2000-07943
v. : DECISION
OHIO DEPARTMENT OF : Judge J. Warren Bettis
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} This case was tried to the court on the sole issue of liability. Plaintiffs assert claims of personal injury based upon the alleged negligence of defendant. Defendant denies liability.

{¶2} On September 22, 1998, at approximately 11:45 a.m., plaintiff, Kathryn Plummer (Plummer), was operating her motor vehicle northbound on SR 104 near the US 22 intersection in Pickaway County, Ohio. Plaintiff, James E. Weese (Weese), was a passenger in Plummer's vehicle. Charles F. Dillon (Dillon) was operating his motor vehicle eastbound on US 22. Dillon stopped at the red light in the intersection, but immediately after he stopped, the traffic light turned green and he proceeded forward. Plaintiffs testified that their traffic light was green also. The cars collided in the intersection.

{¶3} Plaintiffs contend that defendant was negligent in its maintenance of the traffic control device and was aware that it had malfunctioned numerous times prior to their accident. Defendant contends that plaintiffs were unfamiliar with the intersection in

question and that the light was not malfunctioning at the time of the accident.

{¶4} Steve Hudson, a Signal Electrician II, testified that he had worked for defendant for nine years and that he had an associate degree in computer programming and some training in electricity. He testified that a decision was made in August or September 1998 to place a new traffic signal at the intersection of SR 104 and US 22. At that time there was a flashing red light and stop signs for SR 104, and a flashing yellow light for US 22.

{¶5} On September 9, 1998, the new signal was installed, which consisted of eight lights, with two lights in each direction. The light system included a controller and monitor that were placed in a housing on the northwest corner of the intersection. "Traffic loops" were imbedded below the surface of the pavement at points known as "stop bars," where vehicles were expected to stop prior to entering the intersection. The traffic loops detected vehicle mass above the pavement and sent a computerized signal for the lights to operate. The first vehicle to pass over a stop bar triggered a green light. Hudson testified that if there were no traffic in the intersection, all four directions would have had a red light.

{¶6} A second type of detector triggered an "extension loop" that was located approximately three hundred feet away from the light in each direction of the roadway. If a second vehicle passed over an extension loop after another vehicle had triggered a stop bar to generate a green light, the second vehicle was given an additional five seconds of green light.

{¶7} On September 9, 1998, a traffic signal operator programmed the new signal. At 2:30 p.m. that day, a trouble call was placed. At 3:45 p.m., two employees of defendant arrived on location and discovered that the signal was on "flash," meaning that the lights were flashing red in all directions, and that light

numbers 2 and 6, the lights for east and westbound US 22, had failed. The monitor was reset, but it did not alleviate the problem, and the conflict monitor and controller were replaced. While defendant's employees were present at the intersection, a collision occurred between a motorist headed southbound on SR 104 and a motorist heading eastbound on US 22. Both parties involved in that accident stated that they had a green light.

{¶8} On September 10, 1998, another maintenance call was placed. The complaint at that time was that the light between the east and west intervals did not stay green long enough and that light numbers 4 and 8, which controlled north and southbound SR 104, went on flash. Defendant's operator reset the signal and monitored its operation.

{¶9} On September 11, 1998, a report was made at 8:00 a.m. that the lights were on flash again. After contacting the supplier, defendant replaced parts in the system that were connected to the traffic loops in the pavement. Defendant's operator then checked the equipment and found it to be functional.

{¶10} On September 12, 1998, at 12:34 p.m., another trouble call was placed. The field check revealed that light numbers 4 and 8 had failed again and that the lights were on flash. Defendant's operator disabled all field check switches and placed the light back in service.

{¶11} On September 14, 1998, a trouble call was placed at 2:00 p.m. On that date, the message boards on east and westbound US 22 were changed from, "new signal ahead, be prepared to stop," to "4-way stop ahead." Stop signs were erected for all four directions and the signal was put on flash.

{¶12} There is no documentation in the record regarding any work that was performed on the signal between September 15 and September 21, 1998.

{¶13} On September 22, 1998, at approximately 9:10 a.m., Hudson performed routine maintenance and checked the signal operation. He put the signal back into operation, changed the message boards, removed the stop signs, monitored the light for approximately one hour, and left the scene at approximately 11:30 a.m. Plaintiffs' accident occurred at approximately 11:45 a.m. Two other trouble calls were recorded on September 22, 1998, after plaintiffs' accident: one call at 3:43 p.m. stated that there was an absence of amber in the light cycle, and another call at 9:43 p.m. from the Pickaway County Sheriff's Office reported that there were green lights in each direction. When Hudson arrived at 10:20 p.m., he tested the amber operation in all four directions for two hours, and he found that there were no greens in conflicting phases. The report was later classified as a "false call."

{¶14} The day of the accident was the first time that Plummer had approached the intersection with the new traffic signal in place. She testified that her light was green and did not change color from the first time she saw it until the accident occurred. She further testified that she had seen Dillon's vehicle stopped at the intersection as she approached it. Weese testified that he noticed that the light was green when he and Plummer were approximately four car lengths away from it and that Dillon's car was stopped at the intersection. However, as Weese and Plummer approached the intersection, Dillon's car went forward. Weese then yelled that a car was coming.

{¶15} Debbie Draise, a bus driver for Head Start of Pickaway County, passed through the intersection at approximately 10:30 that morning, and noticed that the light was not working and that the

intersection was controlled by four-way stop signs. At approximately 11:45 a.m., she was driving eastbound, this time on US 22 behind Dillon's car. She testified, however, that at that time, the four-way stop had been removed, and the traffic signal was controlling the intersection. She stated that the light was green at first approach, then it turned red, then suddenly back to green. As soon as Dillon stopped for the red light, it turned green again. When Dillon's car proceeded forward, plaintiffs' car collided with it.

{¶16} Hudson testified that Plummer needed to drive over the traffic loop in SR 104 to activate the green light and that if she had been traveling slower than the posted speed limit, her light would have turned red again before she could have driven through the intersection. He also stated that it was impossible to have conflicting green lights because the signal defaulted to red flash mode in every direction if an abnormality was detected. When he tested the light and tried to get two conflicting green lights, the lights would flash red in all four directions every time. He also stated that to his recollection, after the parts were sent for testing, no problem was found.

{¶17} In order for plaintiffs to prevail upon their claim of negligence, they must prove by a preponderance of the evidence that defendant owed them a duty, that it breached that duty, and that the breach proximately caused their injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Although the state is not an insurer of the safety of its highways, the state has a duty to maintain its highways in a reasonably safe condition. *Knickel v. Dept. of Transp.* (1976), 49 Ohio App.2d 335, 339. ODOT has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St.3d 39, 42.

{¶18} The court finds that defendant had actual notice of problems with the traffic signal since the day it was first installed. Two of the reported problems were simultaneous green lights in conflicting directions and improper timing of a green light. Based upon the reported problems with the signal and the credible testimony of plaintiffs and Draise, the court finds that when defendant returned the signal into operation on September 22, it was still malfunctioning. In fact, evidence in the record supports plaintiffs' contention that there were green lights in conflicting directions on September 9, and later in the evening of September 22, 1998. Although Hudson's testimony regarding the mechanics of the traffic signal was credible, his testimony was based upon his assumption that the signal was functioning properly.

Therefore, the court finds that defendant breached its duty of ordinary care towards plaintiffs. Judgment shall be rendered in favor of plaintiffs.

J. WARREN BETTIS
Judge

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