

ODOT's truck cross the center line. In an effort to avoid a collision, Kehl braked and steered her vehicle to the berm. As the truck continued to skid, it rotated counterclockwise and struck the front and left sides of Kehl's vehicle. Kehl sustained serious injuries as a result of the accident.

{¶3} 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 it breached that duty, and that the breach proximately caused their injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶4} Plaintiffs allege that McGinty's conduct constitutes negligence per se in violation of R.C. 4511.29 (driving left of center). Specifically, that McGinty's careless steering and braking caused the truck to go left of the center line. Plaintiffs assert that the negligence of McGinty and Nichols combined to produce their injuries. Defendants argue that McGinty responded reasonably to a sudden emergency and that Nichols' negligence was the sole proximate cause of the accident.

{¶5} The Supreme Court of Ohio has set forth the sudden emergency doctrine, as follows: "*** [T]he 'sudden emergency' *** exception states that a driver does not violate the statute where the assured clear distance ahead is, without his fault, suddenly cut down or lessened by the entrance into his path of an obstruction which renders him unable, in the exercise of reasonable care, to avoid a collision. 471 N.E.2d 477 *Erdman v. Mestrovich* (1951), 155 Ohio St. 85 ***." *Shinaver v. Szymanski* (1984), 14 Ohio St.3d 51, 54; *Millard v. CSX Transp., Inc.* (Feb. 10, 1998), Franklin App. No. 97APE05-717. Although plaintiffs assert that R.C. 4511.29 (driving left of center) rather than R.C. 4511.21

(assured clear distance) is the applicable statute in this case, the parties agree that McGinty's conduct should be analyzed pursuant to the sudden emergency defense.

{¶6} To support their assertion that McGinty was not reacting to a sudden emergency at the time of the accident, plaintiffs offered the testimony of James Burns, the driver of another truck that was following behind the ODOT truck. Burns testified that he took his foot off of the accelerator pedal when he observed Nichols' car approaching the highway and that it appeared that McGinty also stopped accelerating at this time. In Burns' estimation, there was a two or three second delay between the time that Nichols' car entered the highway and the time when he observed the dump truck's brake lights.

{¶7} McGinty testified that Nichols' car momentarily stopped near the end of the driveway before it proceeded onto the highway. McGinty explained that he only tapped his brakes because Nichols' vehicle had stopped at the end of the driveway. McGinty further testified that he immediately "jammed" on his brakes to avoid hitting Nichols' car when it pulled out in front of him. McGinty denied steering to the left and testified that he lost control of the truck as it began to skid and rotate to the left. McGinty also testified that he noticed a woman walking on the east side of the highway close to where Nichols' vehicle was traveling.

{¶8} Henry Lipian, plaintiffs' accident reconstruction expert, investigated the accident and analyzed information related to braking, speed and reaction time. Lipian testified that according to his analysis of the skid marks that were left by ODOT's truck, all of the truck's brakes were functioning properly at the time of the accident. Lipian estimated that approximately two seconds

elapsed between the time that McGinty perceived a hazard and the time when the truck's brakes began to function. According to Lipian, this period of time included McGinty's perception and reaction time and an "air-brake lag time." Based upon his analysis, Lipian opined that McGinty had sufficient time to slow his truck and to avoid striking Nichols' vehicle without locking the truck's brakes. Lipian also concluded that the ODOT truck traveled left of the center line as a result of being steered after it began to skid. Lipian's opinion in this regard was based upon a report prepared by defendants' expert, L. Gregory DuBois, who found that during skid testing, the truck rotated, "but not to the extent that occurred at the time of the accident." (Plaintiffs' Exhibit 1.)

{¶9} DuBois, an engineer specializing in accident reconstruction, opined that McGinty lost control of the truck when it began to skid and that the truck could not be steered as long as all four wheels on the vehicle remained locked. DuBois explained that vehicle rotation can occur when the rear brakes lock before the front brakes and that the direction of rotation depends upon several variables including the slope of the roadway and the condition of a vehicle's wheels. DuBois testified that the rear brakes on a dump truck are "oversized" to handle a potentially heavy load and that this fact could cause the rear brakes on an empty truck to lock before the front brakes. DuBois opined that the ODOT truck skidded and rotated counterclockwise as a result of the rear wheels locking when McGinty applied the brakes. According to his speed calculations, which were based on the physical evidence, DuBois concluded that the dump truck was traveling below the posted speed of 50 miles per hour when McGinty began braking.

DuBois further opined that McGinty acted in an appropriate and timely manner when he applied his brakes.

{¶10}Ohio State Highway Patrol Sergeant Brian Darby testified regarding his analysis of the accident scene. Sgt. Darby had responded to the accident within several minutes of the occurrence and had taken measurements for his investigation report. Based upon his analysis of the skid marks, Sgt. Darby calculated that the ODOT truck was traveling at 46 miles per hour before McGinty began to skid and that all four wheels were "locked-up" during the skid.

Sgt. Darby concluded that McGinty was unable to steer the truck once it began skidding, that the truck's momentum caused it to skid left of the center line and that the truck would have struck Nichols' car if McGinty had not braked so hard.

{¶11}Plaintiffs assert that defendants cannot rely on the sudden emergency exception because McGinty reacted to a "self-created" emergency. Although Burns testified that McGinty did not brake until approximately two to three seconds after Nichols' car entered the roadway, according to plaintiffs' expert, it took McGinty two seconds to perceive the hazard and to react to it by applying his brakes. The court finds defendants have established, by the greater weight of the evidence, that McGinty was confronted with a sudden and unexpected emergency when Nichols drove in front of the ODOT truck.

{¶12}A driver who is faced with a sudden emergency is required to exercise the same care that an ordinarily prudent person would exercise under the same or similar circumstances. *Radecki v. Lammers* (1968), 15 Ohio St.2d 101. In this case, McGinty applied the brakes when Nichols drove in front of him. The court finds McGinty's conduct to be reasonable under the circumstances.

Plaintiffs argue that after McGinty began to brake, he steered left into the opposing lane of traffic rather than turning right onto the shoulder of the highway. However, photographs taken soon after the accident by the Ohio State Highway Patrol support Sgt. Darby's testimony that the truck was not under McGinty's control when it skidded across the center line. The photos show four skid marks in the northbound lane that run parallel to the center line, then veer to the left across the center line. Both parties' experts agreed that vehicle tires must be rolling in order to provide directional input to the vehicle. The photographic evidence shows that the tires on the ODOT truck remained locked from the time the truck began to skid until it struck plaintiffs' vehicle. Moreover, the court finds McGinty's testimony that he did not steer to the left to be credible. Therefore, the court concludes that the truck's rotation and westward movement, across the center line during the skid was not caused by McGinty's steering the truck.

{¶13}The court further finds that Nichols' negligence was the sole proximate cause of this accident and plaintiffs' injuries. Consequently, plaintiffs have failed to prove their claim of negligence by a preponderance of the evidence. Accordingly, judgment shall be rendered in favor of defendants.

FRED J. SHOEMAKER
Judge

