

[Cite as *Reynolds v. Ohio Dept. of Natural Resources*, 2002-Ohio-7412.]

IN THE COURT OF CLAIMS OF OHIO

DEBORAH A. REYNOLDS :
Plaintiff : CASE NO. 2001-08978
v. : DECISION
STATE OF OHIO DEPARTMENT OF : Judge Fred J. Shoemaker
NATURAL RESOURCES, et al. :
Defendants :
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{¶1} This is a negligence case that was tried to the court on the issue of liability. On June 9, 1998, plaintiff was traveling in a silver 1985 Pontiac Parisienne on County Road 2 in Jackson County. On that date, plaintiff's vehicle was involved in a collision with a green F-350 Ford truck owned by defendant, Ohio Department of Natural Resources (ODNR) and operated by its employee, Johnny Jenkins.

{¶2} Bradley A. Perry, a sergeant with the Ohio State Highway Patrol, testified that he responded to the accident on June 9, 1998. Sergeant Perry noted an 18-foot skid mark made by the left front tire of the car, running along the centerline of the road. He stated that the skid mark could have been caused by either the braking action of the driver or due to the impact of the collision, which could cause the tire to become locked in place. Sergeant Perry thought it was likely that both vehicles had crossed the centerline, "at least to a degree." Perry's accident report noted that the width of the pavement on the bridge was 17 feet, 6 inches,

and that the entire width of the bridge from railing to railing was 19 feet 6 inches.

{¶3} The pavement was wet on the day of the accident because of rain. Sergeant Perry stated that one of the skid marks was almost directly on the yellow centerline. He thought it was likely that at some point the front end of the Pontiac would have been over the centerline after the vehicles collided.

{¶4} Sergeant Perry took a statement from plaintiff at the accident scene. Plaintiff told the officer that she was driving approximately 50 miles per hour and saw a "big white truck" on the bridge traveling in the middle of the road. Plaintiff told the officer she could not remember whether she swerved prior to slamming on her brakes. Sergeant Perry tried to prompt plaintiff's memory regarding her description of the truck because the truck was green in color rather than white.

{¶5} Plaintiff testified at trial that at approximately 3:30 p.m. on the day of the incident, she was traveling north on County Road 2 in Jackson County, that the weather conditions were wet, and that it was sprinkling at the time of the incident. Plaintiff testified that she observed a truck traveling "left of center" in the middle of the bridge, that she slammed on her brakes, that her vehicle impacted the truck, and that she was momentarily rendered unconscious. Plaintiff stated that she was traveling approximately

{¶6} 40 to 45 miles per hour "because I was coming up on a curve." On cross-examination, plaintiff stated that she believed the impact occurred on the bridge.

{¶7} John Ferguson testified as an expert on behalf of plaintiff. Ferguson is a patrol sergeant with the North College Hill Police Department, where he is in charge of the department's accident investigation section. Ferguson prepared a report regarding the accident. In preparation for trial, Ferguson

reviewed various data, including the crash report by the trooper, photos of the crash site, and deposition testimony.

{¶8} Ferguson stated that the width of the stake bed of the ODNR truck was 96 inches and its length, 150 inches. Plaintiff's car, a Pontiac, was 76.4 inches in width and 212 inches in length.

{¶9} Ferguson opined that the ODNR vehicle encroached on the double yellow line. Ferguson stated that the distance between the railings of the bridge was 19 feet, 6 inches. Noting that the truck was 96 inches in width, he stated that there were 99 inches of lane space available for the driver. He estimated that the truck would likely have moved toward the center to account for an object marker located near the bridge. Accounting for the side mirrors on the truck, he estimated that the width of the truck was 108 inches. He believed that the impact occurred near the south entrance of the bridge and that the impact caused plaintiff's front tire to deflate.

{¶10} Johnny Jenkins, a wildlife technician with ODNR, testified that on June 9, 1998, he was working his regular daytime shift and was returning to his office at approximately 3:20 p.m. after picking up some supplies.

{¶11} Jenkins testified that he was north of the bridge when he first saw plaintiff's vehicle, and that it was "about 2 feet on the side of my road." Again he also estimated that, at the time of impact, plaintiff's vehicle was 2 feet over on his side of the road. Jenkins stated that he pulled to the right as far as he could but never applied his brakes.

{¶12} ODNR presented the expert testimony of Henry Lipian, a motor vehicle accident reconstructionist. Lipian conducted a site inspection on May 22, 2002. Based upon his review of the evidence, Lipian opined that the initial contact involved a "sideswipe," in which the left front corner of plaintiff's vehicle came in contact

with the left front corner of the truck. According to Lipian, as the accident progressed, the roof pillar of plaintiff's vehicle came in contact with the cargo bed of the truck, and the left front corner of the car impacted the left rear dual wheels of the truck, causing the Pontiac to "underride" the other vehicle.

{¶13} Lipian stated that based upon an analysis of how the vehicles disengaged following impact, it was not feasible that the truck could have been two feet over into plaintiff's lane. He stated that, given the curvature of the road, the Pontiac would have been the vehicle most likely to have traveled left of center.

He further opined that, at the time of initial impact, the vehicle most likely to have been left of center was the Pontiac. He estimated that plaintiff's vehicle was one or two feet left of center at the time of the initial impact, and he opined that no part of the ODNR vehicle was left of center.

{¶14} After considering the totality of the evidence, including the exhibits, and evaluating the credibility of each witness, including the expert witnesses, the court finds that plaintiff's own negligence in locking up her brakes and losing control of her vehicle on the slippery highway was the sole proximate cause of the accident. Therefore, the court finds that plaintiff has failed to prove by a preponderance of the evidence that ODNR was negligent and that such negligence was the proximate cause of the accident. Assuming, arguendo, that ODNR was negligent, plaintiff's negligence substantially exceeded any negligence of ODNR.

{¶15} Accordingly, judgment shall be rendered in favor of defendants.

FRED J. SHOEMAKER
Judge

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