

[Cite as *Higgins v. Ohio Dept. of Transp.*, 2003-Ohio-1123.]

IN THE COURT OF CLAIMS OF OHIO

JUDY L. HIGGINS	:	
3115 County Road 168	:	
Cardington, Ohio 43315	:	Case No. 2002-09536-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPT. OF TRANSPORTATION,	:	
DISTRICT 3	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
 Department of Transportation
 1980 West Broad Street
 Columbus, Ohio 43223
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{¶1} During the morning daylight hours of October 15, 2002, personnel of defendant, Department of Transportation, were conducting roadway edge line painting operations on State Route 100 in Marion and Crawford Counties. Defendant related, "the edge line is the white paint strip that runs along the right side of the highway indicating the area where the pavement ends". Defendant insisted the edge line painting on State Route 100 was conducted properly and safely in accordance with all requirements mandated for an activity of the type in question. Traffic control for the painting operation involved three vehicles; a truck sweeping the area to be painted, followed by a paint truck applying the edge line paint, and another truck following ½ mile to one mile behind the paint truck. This last truck in line bore signs reading EDGE LINE PAINT and WET PAINT with an arrow pointing to the roadway edge

line. Defendant asserted adequate precautions were taken to perform the painting activity in a safe manner and to warn all motorists about the operation.

{¶2} Plaintiff, Judy Higgins, stated she was traveling on State Route 100 on October 15, 2002, at approximately 11:30 a.m., when she passed three Department of Transportation trucks parked adjacent to the traveled portion of the roadway. Plaintiff identified one of the parked trucks as a line painting vehicle. Plaintiff explained that when she passed the three parked vehicles she had already driven over the newly painted edge line on State Route 100, but was totally unaware the edge line had been freshly painted. Plaintiff did not explain why she chose to drive her 2002 black Toyota truck over the roadway edge line marking. Plaintiff continued to drive on State Route 100 and eventually stopped in Mt. Gilead, Ohio. After stopping, plaintiff inspected her truck and discovered white paint on the vehicle's passenger side tires. She eventually realized white paint specks covered the body of her vehicle as well as the passenger side tires. Then plaintiff reasoned the paint damage to her truck had emanated from the edge line painting on State Route 100 conducted by defendant. Plaintiff informed defendant about the damage to her vehicle and had the paint removed at a local automotive body shop.

{¶3} Consequently, plaintiff filed this complaint seeking to recover \$225.00, the total cost of paint removal attempts, plus a claim for filing fee reimbursement. Plaintiff has asserted she incurred these damages as a proximate cause of negligence on the part of defendant in performing roadway painting on State Route 100. Specifically, plaintiff contended her damages were the result of defendant's negligence in failing to warn her of the painting activity. Plaintiff asserted no signs or other traffic control devices were posted to inform her of wet paint on the highway edge line.

{¶4} Defendant has denied any liability in this matter.

Defendant asserted plaintiff was warned of the painting operation and wet edge line paint by the trail vehicle following the painting vehicle. Defendant suggested plaintiff voluntarily passed the warning sign displaying trail vehicle which was following ½ mile to a mile behind the paint truck. Defendant reasoned plaintiff then must have encountered fresh edge line paint at a point and time when the paint had not had sufficient time to dry. Defendant did not offer any information regarding how long it took the edge line paint to dry after application. Defendant did not present any evidence concerning the speed of any truck involved in the painting procedure. Defendant did speculate plaintiff received adequate notice of the painting activity from the warning sign displaying trail vehicle.

{¶5} Defendant argued plaintiff's own negligent driving was the cause of the paint damage to her truck. Defendant contended plaintiff's driving act constituted a violation of R.C. 4511.17(B) which states, "No person without lawful authority, shall do any of the following: (B) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition and is marked by flags, markers, signs, or other devices intended to protect it". Defendant has therefore asserted plaintiff's negligence in assuming the risk of knowingly driving over wet paint was the sole cause of her property damage. Defendant has denied any of its personnel acted negligently in conducting the October 15, 2002, edge line painting procedure.

{¶6} Plaintiff filed a response in which she denied again that she knowingly drove over fresh paint. Plaintiff also denied she passed defendant's trail vehicle on State Route 100 and then drove over a freshly painted edge line. Plaintiff reiterated she did not have any warning about the painting operation because she passed defendant's vehicles as they were parked off the traveled portion of the roadway. Plaintiff professed defendant's sweeper truck and

trail vehicle were parked to her right in a field adjacent to the roadway. The paint truck, according to plaintiff, was parked off the traveled portion of the roadway to her left. Plaintiff reasoned she came upon defendant's trucks within minutes after the trucks had pulled off the road and parked. Plaintiff reasserted she did not see any signs posted warning her of the painting activity. Plaintiff again argued her damages were proximately caused by defendant's negligence.

{¶7} Contrary, to defendant's contention, the court concludes plaintiff's act of driving over fresh painted edge lines did not constitute a violation of R.C. 4511.17(B). No evidence has been presented to show plaintiff possessed the culpable mental state of knowingly driving on freshly painted road markings. In fact, all evidence indicates plaintiff was unaware of the physical nature of the roadway edge markings. Therefore, negligence on the part of plaintiff based on a statutory violation is not an issue in this matter.

{¶8} Defendant has the 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. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Gael s. State* (1979), 77-0805-AD.

{¶9} In the instant claim, plaintiff's evidence tends to indicate she did not receive adequate warning of defendant's painting activity since defendant's vehicle which displayed warning signs was pulled off the roadway shortly before plaintiff's damage occurrence. Therefore, defendant's attempts at notifying motorists of the painting operation were ineffective pertaining to plaintiff.

{¶10} Plaintiff has the burden of proof to show her property

damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has provided sufficient proof to show her truck was damaged as a result of negligent acts or omissions on the part of defendant's agents. Consequently, defendant is liable to plaintiff in the amount of \$200.00, plus the \$25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶11} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶12} IT IS ORDERED THAT:

{¶13} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶14} 2) Defendant (Department of Transportation) pay plaintiff (Judy L. Higgins) \$225.00 and such interest as is allowed by law;

{¶15} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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Filed 2/26/03
Jr. Vol. 734, Pg. 74
Sent to S.C. reporter 3/11/03