

IN THE COURT OF CLAIMS OF OHIO

BETTY J. HOSMER :
16076 Tavern Road, S.R. 168 :
Burton, Ohio 44021 : Case No. 2002-08301-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT OF :
TRANSPORTATION :

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 August 21, 2002, personnel of defendant, Department of Transportation, were conducting centerline and edge line painting operations on State Route 168. 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 168 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 behind the paint truck. This last truck in line bore signs reading DO NOT PASS and WET PAINT. 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, Betty J. Hosmer, stated she was traveling on State Route 168 at noon on August 21, 2002, when she observed a line of vehicles in front of her moving up a hilly area at about 15 mph. Plaintiff indicated she drove up the hill and around an area of curved highway when she noticed defendant's painting trucks traveling on Jug Road, a portion of roadway forming a right intersection with State Route 168. Plaintiff related she continued driving on State Route 168 until she reached her home. Upon examining her van after she arrived home, plaintiff discovered paint damage on the left side of the vehicle. Plaintiff believed her van received the paint damage as a result of driving over fresh wet centerline paint on State Route 168. Plaintiff declared she received no warning and had no knowledge concerning defendant's painting activity. Plaintiff asserted she was unaware of the presence of defendant's crews until she saw defendant's paint trucks traveling on Jug Road as she passed by on State Route 168.

{¶3} Plaintiff filed this complaint seeking to recover \$62.25, the cost of removing paint from her vehicle. Plaintiff contended she incurred this expense as a proximate cause of negligence on the part of defendant in conducting the roadway painting on August 21, 2002. Specifically plaintiff implied 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 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 behind the

paint truck. Defendant reasoned plaintiff then must have encountered fresh 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 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 van. 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 August 21, 2002 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 168 and then drove over a freshly painted line. Plaintiff reiterated she did not have any warning about the painting operation because she passed defendant's vehicles as they were traveling off State Route 168 and on Jug Road. 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 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 v. 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 van 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 \$62.25, 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 (Betty J. Hosmer) \$87.25 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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