

[Cite as *Gonczy v. Ohio Dept. of Transp.*, 2003-Ohio-2172.]

IN THE COURT OF CLAIMS OF OHIO

REBECCA GONCZY :  
Plaintiff :  
v. : CASE NO. 2002-10666-AD  
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶1} During the morning daylight hours of August 7, 2002, personnel of defendant, Department of Transportation, were conducting centerline and edge line painting operations on State Route 88 in Geauga County. 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 88 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, Rebecca Gonczy, stated she was traveling on State Route 88 at noon on August 7, 2002, when she drove around a curve and she came upon defendant’s paint trucks. Plaintiff related she observed two trucks, one directly behind the other.

According to plaintiff, she did not notice the paint trucks until she had driven around the curved roadway area of State Route 88. As she neared defendant's trail vehicle, plaintiff related "the man in the truck waved for me to go around him." Plaintiff apparently drove past the paint operation vehicles, proceeded to Parkman, Ohio where she stopped and subsequently observed white paint on the right side of her automobile. Plaintiff declared she received no warning and had no knowledge concerning the painting operation. Plaintiff asserted she was unaware of the presence of defendant's crews until she drove near defendant's trail vehicle.

{¶3} Plaintiff filed this complaint seeking to recover \$348.50, 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 7, 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. Plaintiff submitted the filing fee with the complaint.

{¶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 asserted plaintiff voluntarily kept swerving her car over the fresh edge line paint. Defendant further asserted plaintiff on her own volition chose to pass all the vehicles involved in the painting operation. Defendant denied any of its crew waved or directed plaintiff to pass the painting activity trucks.

{¶5} Defendant argued plaintiff's own negligent driving was the cause of the paint damage to her vehicle. 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 7, 2002 painting procedure.

{¶6} On March 28, 2003, plaintiff filed an untimely response to defendant's investigation report. Plaintiff asserts defendant's characterization of the events leading up to her property damage are false. However, plaintiff offers no evidence other than her own statements to prove her allegations.

#### CONCLUSIONS OF LAW

{¶7} Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶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 190; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶9} Plaintiff has the burden of proof to show her property damage was the direct result of failure to 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 failed to prove her property damage was caused by any negligent act or omission on the part of defendant's agents. Conversely, evidence directs the court to conclude plaintiff's own negligent driving was the cause of her property damage. Therefore, this claim is denied.

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

{¶11} IT IS ORDERED THAT:

{¶12} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶13} 2) The court shall absorb the court costs of this case in excess of the filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk

Order cc:

Rebecca Gonczy  
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For Defendant

RDK/laa  
4/3  
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