

[Cite as *Schulte v. Ohio Dept. of Transp.*, 2003-Ohio-3899.]

IN THE COURT OF CLAIMS OF OHIO

JOYCE SCHULTE, et al. :

Plaintiffs :

v. :

CASE NO. 2003-03701-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION :

MEMORANDUM DECISION

Defendant :

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

{¶1} On February 3, 2003, at approximately 8:00 p.m., plaintiff, Joyce Schulte, was traveling on U.S. Route 33 near State Route 68 in Logan County, when her automobile struck a downed light pole which was laying across the roadway. The impact with the downed light pole caused damage to the exhaust system and transmission of plaintiff's vehicle as well as tire damage. Although plaintiff's property damage incident occurred during nighttime hours under rainy conditions, the roadway area was lighted and the collision site was located on a straight contour highway area. Plaintiff disclosed she was driving at approximately 45 m.p.h. when her car struck the downed light pole. The posted speed limit on U.S. Route 33 was 65 m.p.h.

{¶2} Since defendant, Department of Transportation, owned and maintained the light pole plaintiff's vehicle struck, plaintiff has asserted defendant should bear liability for her repair costs. Plaintiff filed this complaint seeking to recover \$1,767.24, the total cost of automotive repair resulting from the February 3, 2003 property damage event.

{¶3} Defendant denied any liability in this matter. Defendant denied any knowledge of a downed light pole prior to the incident forming the basis of this claim. Defendant did not offer an explanation regarding how or why a light pole under its control

fell across a roadway thereby creating a hazardous condition.

{¶4} 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. This duty encompasses removal of hazardous conditions such as the fallen light pole in the instant claim. Defendant has the duty to maintain its highway 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.

{¶5} Upon review of the limited presented circumstances in the instant claim, and in viewing the evidence most favorably to plaintiff, the court concludes defendant's light pole fell under such conditions attributable to negligent maintenance on the part of defendant. See *Turner v. Ohio Department of Transportation* (2002), 2002-04062-AD. Defendant failed to provide any evidence to rebut this inference of negligence.

{¶6} However, the court concludes under the facts of this claim that plaintiff was also negligent. Ohio's comparative negligence statute, R.C. 2315.19 bars plaintiff from recovery if her negligence is greater (more than fifty percent) than defendant's. In this claim, evidence establishes plaintiff failed to exercise a reasonable degree of care for her own safety. Plaintiff operated her vehicle at a speed which was unreasonable under circumstances where she was negligent in failing to maintain an assured clear distance ahead.

{¶7} R.C. 4511.21(A) states as follows:

{¶8} "(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead."

{¶9} To establish a violation of R.C. 4511.21(A), the evidence must show that a

driver collided with an object that (1) was ahead of her in her path of travel; (2) was stationary or moving in the same direction as the driver; (3) did not suddenly appear in the driver's path; and (4) was reasonably discernible. *Blair v. Goff-Kirby Co.* (1976), 49 Ohio St. 2d 5,7.

{¶10} From the available facts in the present claim, there is sufficient evidence to establish to the trier of fact that the fallen light pole was a reasonably discernible object for purposes of invoking a violation of R.C. 4511.21(A). *Blair*, id. Accordingly, the court finds plaintiff was comparatively negligent in causing the property damage claimed. Plaintiff's negligence exceeded any negligence on the part of defendant. Consequently, plaintiff's claim is denied.

{¶11} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Joyce Schulte  
Michael Schulte  
609 West Fifth Street  
Delphos, Ohio 45833

Plaintiffs Pro se

Gordon Proctor, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

For Defendant

RDK/laa  
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