[Cite as *Reaver v. Dept. of Rehab. & Corr.*, 2003-Ohio-637.]

IN THE COURT OF CLAIMS OF OHIO

MARK A. REAVER, et al.	:	
Plaintiffs	:	CASE NO. 98-11146
v.	:	DECISION
DEPARTMENT OF REHABILITATION AND CORRECTION, et al.	:	Judge Fred J. Shoemaker
Defendants	:	

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{¶1} Plaintiffs, Mark and Cynthia Reaver, filed this action alleging negligence on the part of defendant, Department of Rehabilitation and Correction (DRC),[1] in allowing a concrete post to remain on its premises in close proximity to a public roadway. The issues of liability and damages were bifurcated for trial which proceeded on the matter of liability.

{¶2} The case arose as a result of a one-car accident that occurred on November 28, 1996, in Madison County, Ohio. At approximately 10:30 a.m. on Thanksgiving Day, Kristeen Reaver, then age 16, was driving a 1984 Chevrolet Cavalier westbound on County Road 13, a two-lane road. Her brother Nathan, who was 11 years old at the time, was a front-seat passenger in the vehicle which was traveling at more than 50 miles per hour. It is undisputed that the car initially traveled partially off the right side of the roadway, then returned to the paved portion of the road for a short distance, and again went completely off the right side of the road. Kristeen was unable to regain control of the car as the vehicle crossed over the driveway entrance to defendant's property, hit a concrete post nearly head-on, rotated clockwise, and then came to rest in a ditch facing County Road 13. Both occupants of the car were wearing seatbelts, although there was some evidence suggesting that

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[1] Although the Ohio Department of Health was named as a defendant in plaintiff's complaint, DRC shall be referred to as the single defendant in this decision.

Nathan's seatbelt failed to keep him restrained upon impact. Nathan suffered serious disabling brain and facial injuries. Plaintiffs assert that if the concrete post had not been near the roadway, Nathan would have suffered only minor injuries when the automobile left the roadway.

{¶3} Defendant operates London Correctional Institution on the premises where the accident occurred. The concrete post was located on defendant's property approximately 13 feet from the surface edge of the roadway, entirely on the right-of-way[2] for County Road 13. The right-of-way extended 15 feet from the berm onto defendant's property. The post was described as being 2 feet by 2-1/2 feet on a concrete footer that was 3 feet by 2-1/2 feet. The post measured approximately 5-1/2 feet in height. Although it was unclear when the post first appeared on defendant's property, evidence was presented at trial to show that the concrete post had been in place for many years and that it may have originated as part of a fence.

{¶4} Plaintiffs argue that defendant was negligent in allowing the post to remain on the right-of-way because the object created a hazard to motorists whose vehicles inadvertently leave the traveled portion of the roadway. Defendant countered that it had no duty to clear the right-of-way of objects and contended that Kristeen Reaver's negligent driving was the sole proximate cause of the motor vehicle accident and Nathan's resulting injuries. Defendant also maintained that there is no issue of notice in this case inasmuch as there is no evidence of prior accidents involving the concrete pillar.

{¶5} Plaintiffs filed a connected action against the Board of County Commissioners of Madison County (Madison County), since Madison County was responsible for maintenance of the right-of-way for County Road 13. Madison County argued successfully that it was immune from liability pursuant to R.C. 2744.02(A)(1), which stated: "except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to

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[2]

{a} R.C.4511.01(UU)(2) defines "Right-of-way" as follows:

{¶b} "A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, right-of-way includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority."

persons or property allegedly caused by any act or omission of the political subdivision *** in connection with a governmental or proprietary function." Plaintiffs also argued before the common pleas court that Madison County had a statutory duty to keep the shoulder of public roads free from nuisance pursuant to R.C. 2744.02(B)(3).[3] However, the common pleas court granted summary judgment in favor of Madison County, holding that "the shoulder of a public road or highway does not constitute public grounds for purposes of liability under O.R.C. §2744.02(B)(3)." *Reaver v. Reaver* (Sept. 11, 2001), Clark C.P. No. 98-CV-0833.

{¶6} In Ohio, courts have found that liability will not attach to an adjacent landowner for damages "proximately caused by the maintenance of an unreasonably dangerous off-roadway condition rendering unusual and non-ordinary travel off of the roadway unsafe." *Ramby v. Ping* (April 13, 1994), 2nd Dist. No. 93-CA-52. In *Ramby*, the court reasoned that "solid objects (such as trees, signposts, utility poles, mailboxes, and boulders) within the right-of-way are not nuisances unless the object interferes with the safety of the usual and ordinary course of travel on the regularly travelled portion of the roadway. *** No precedent exists for imposing a duty on public or private landowners to remove an off-road hazard that renders only off-road travel unsafe, unless the off-road travel is shown to be an aspect of the usual and ordinary course of travel on the roadway. Otherwise, every tree and solid fixed object on roadsides and road-shoulders would impose potential liability on public and private landowners for collisions occurring whenever a vehicle was driven off-road and into the object."

{¶7} The Supreme Court of Ohio has determined that a landowner may be liable for damages proximately caused by maintenance of an off-roadway condition that interferes with the usual and ordinary course of travel on the roadway. See *Manufacturer's Nat'l Bank v. Erie Cty. Road Comm.* (1992), 63 Ohio St.3d 318. The court in *Ramby* also refused to consider extending the holding in *Manufacturer's Nat'l Bank* to impose a duty on "adjacent landowners to keep a right-of-way free

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[3] R.C. 2744.02(B)(3) states as follows: "political subdivisions are liable for injury, death, or loss to person or property caused by their failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, and free from nuisance, ***."

from nuisance *** [that poses] a danger to vehicles that may foreseeably leave the travelled portion of the roadway," unless "the owner of the adjacent property had actual or constructive notice of the nuisance, while the municipality had no such notice." *Ramby*, supra.

{¶8} In the instant case, the court finds that no evidence was produced at trial to show that the concrete post located on defendant's property, 13 feet from the paved portion of the road, rendered the roadway unsafe for the usual and ordinary methods of travel on County Road 13. Moreover, the court recognizes that "the traveling public has no right to drive upon that portion of a public highway which is not dedicated, improved and made passable for vehicular use." *Ohio Postal Telegraph-Cable Co. v. Yant* (1940), 64 Ohio App. 189. Accordingly, this court finds that defendant did not have a duty to remove the concrete post from the right-of-way.

{¶9} While plaintiffs attempted to argue that defendant should be charged with a duty to maintain free "clear zones"[4] within the right-of-way, defendant responded that the responsibility for maintenance of any "clear zones" in the right-of-way for County Road 13 was borne solely by Madison County officials and not the defendant. This court agrees. Ohio courts have held that landowners are under no greater duty than the municipality charged with the responsibility for maintaining the right-of-way. *Ramby*, supra. In *Hurrier v. Gumm (*November 1, 1999), Clermont App. No. CA99-01-005, the appellate court affirmed the trial court which had ruled that "*** owners who create an artificial condition upon their lands are liable to those who foreseeably deviate from the highway in the ordinary course of travel, but liability does not attach when the driver's deviation from the road is due to the driver's own negligence."

{¶10} In her deposition testimony, Kristeen Reaver reported that she had very little recall of what occurred immediately prior to the accident nor could she identify what caused her to drive off the road; however, she did remember that the cruise control option was engaged and preset at 54

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[4]

{a} "The term 'clear zone' is defined in the AASHTO [American Association of State Highway and Transportation Officials] Guide, ***, as:
{¶b} "Clear Zone - That roadside border area, starting at the edge of the traveled way, available for use by errant vehicles." *Neiderbrach v. Dayton Power & Light Co.* (1994), 94 Ohio App.3d 334.

miles per hour. Kristeen also acknowledged that she had been driving for only a few months and had driven this particular vehicle only once or twice prior to the date of the incident.

{¶11} From such testimony, the court concludes that the totality of the evidence supports a finding that the car was traveling at or near the speed limit (55 miles per hour) immediately before it left the roadway. The evidence also indicates that weather conditions were not a factor as it was a clear day and the roads were dry. Although there were no independent witnesses to the collision, the court is persuaded by the evidence submitted that Kristeen Reaver's inattention and resultant failure to maintain reasonable control were the proximate causes of the accident. Accordingly, judgment is rendered in favor of defendant.

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