[Cite as *Pratt v. Ohio Dept. of Transp.*, 2003-Ohio-7304.]

IN THE COURT OF CLAIMS OF OHIO

JAMES A. PRATT	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10201-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶1} During the daylight morning hours of September 11, 2003, defendant, Department of Transportation, conducted centerline painting operations on a stretch of State Route 60 running through the city of Vermilion in Erie County. Defendant explained all traffic control requirements were in place during this centerline painting activity. The traffic control in effect for this operation included a paint application truck followed by a second truck. This second trailing vehicle displayed yellow beacons and warning signs reading, CENTERLINE PAINTING 1500 FEET and DO NOT PASS. The yellow paint applied by defendant's work crew was designed to dry within two minutes after contact with the roadway surface.

{¶2} At approximately 11:00 a.m., plaintiff, James A. Pratt, was traveling north on State Route 60 in Vermilion when he approached a line of slow moving cars in his lane of travel. Plaintiff slowed his vehicle and noticed a car attempting to exit from a service station adjacent to State Route 60. Plaintiff stated as the car began to exit the service station he maneuvered his automobile to the left and came into contact with the freshly painted centerline marking. As plaintiff proceeded along the roadway he observed

defendant's paint trucks pull into a nearby service station entrance. After arriving at his destination and parking his car, plaintiff examined his vehicle, discovering yellow paint splatter along the lower left side of the car.

{¶3} Plaintiff contended defendant should bear liability for the paint damage to his automobile. Plaintiff insisted he did not receive any warning of defendant's painting activity. Plaintiff asserted defendant should have placed markers or cones to warn motorists of the painting operation. Plaintiff filed this complaint seeking to recover $446.22, the cost of removing the paint splatter from his automobile. Plaintiff argued he suffered property damage as a result of defendant's negligence in failing to adequately warn him of the September 11, 2003 painting activity. Plaintiff submitted the filing fee with the complaint.

{¶4} Defendant denied any liability in this matter. Defendant asserted adequate warning was given to motorists of the September 11, 2003 painting operation. Defendant denied breaching any duty of care owed to plaintiff in regard to the centerline painting. Defendant asserted plaintiff's act of violating R.C. 4511.17(B)[1] was the sole cause of the property damage in the instant claim.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} Defendant has the duty to maintain its highways in a reasonable safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49

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[1] R.C. 4511.17 states as follows:

"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."

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.

{¶7} R.C. 4511.17(B) states:

{¶8} "No person, without lawful authority, shall do any of the following:

{¶9} "(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." (Emphasis added.)

{¶10} R.C. 4511.99(D)(1)(a) states in pertinent part:

{¶11} "(D)(1) Whoever violates provisions of sections 4511.01 to 4511.76 of section 4511.84 of the Revised Code, for which no penalty otherwise is provided in this section is guilty of one of the following:

{¶12} "(a) . . ., a minor misdemeanor."

{¶13} R.C. 2901.02(A) states:

{¶14} "(A) Offenses include . . . minor misdemeanor . . ."

{¶15} R.C. 2901.21(A)(1) and (2) state:

{¶16} "(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

{¶17} "(1) The person's liability is based on conduct which includes either a voluntary act, or an omission to perform an act or duty which he is capable of performing;

{¶18} "(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense."

{¶19} R.C. 2901.22(B) states:

{¶20} "(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶21} 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 markings. Therefore, negligence on the part of plaintiff based on a statutory violation is not an issue in this matter.

{¶22} Plaintiff has the burden of proof to show his 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 failed to prove his property damage was caused by any negligent act or omission on the part of defendant's agents. Conversely, evidence has shown plaintiff's own negligent driving by veering onto the painted centerline was the proximate cause of his property damage. Therefore, this claim is denied.

{¶23} 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 plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/RDK/laa
12/2
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