

[Cite as *Bernard v. Ohio Dept. of Transp.*, 2004-Ohio-883.]

IN THE COURT OF CLAIMS OF OHIO

KELLY L. ST. BERNARD, et al. :
Plaintiffs : CASE NO. 2002-03465
v. : Judge Fred J. Shoemaker
DEPARTMENT OF TRANSPORTATION : DECISION
Defendant :
: :

This is a negligence action brought by plaintiff¹ as a result of personal injury that he sustained when driving his vehicle through a construction area which was maintained and inspected by defendant, Ohio Department of Transportation (ODOT). Plaintiff's spouse has asserted a claim for loss of consortium. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

The incident that gave rise to this action occurred on October 7, 1998, on Interstate 280 (I-280) in Toledo, Ohio. At the time, plaintiff was employed as a delivery driver for Bay Corrugated of Monroe, Michigan and he was en route to that location after leaving Loudenville, Ohio. There is some confusion as to the exact location where the incident occurred; the three areas discussed at trial were the Craig Street bridge, the Michigan Avenue bridge and the Greenbelt Parkway. In any event, plaintiff testified that he was driving northbound through a construction zone when his vehicle passed over a drop-off and severely "bottomed out." He contends

¹All references to "plaintiff" contained herein concern Kelly St. Bernard.

that, as a result, the driver's seat slammed into the bottom of the truck and he sustained substantial injuries. The vehicle plaintiff was driving was a 1985 Ford cab with a 53-foot trailer attached. The trailer was 13 feet, 6 inches high and weighed approximately 7,000 pounds. Plaintiff stated that he did not stop or report the incident immediately because there was no safe place to pull over in the construction zone. He drove another 45 minutes to his employer's location, filled out an incident report, then drove himself to the hospital. Plaintiff was alone in the truck at the time of the incident and there were no witnesses to the occurrence.

In response to plaintiff's claims, defendant presented extensive evidence concerning the type of construction that was under way at the time and the methods that ODOT employed to direct traffic through the area. According to ODOT representatives, the only construction area that met plaintiff's description of the conditions where the incident occurred was the Greenbelt Parkway project. Defendant presented credible, persuasive evidence that it had no reports of any drop-off or other hazardous condition in that area.

Plaintiff also alleged that he was approximately one-quarter of a mile north of the Craig Street bridge when the incident occurred. Defendant's evidence demonstrated that there was no work being performed on the north side or northbound lane of the Craig Street bridge at the time of the incident. Additionally, the work that was being performed extended only a few hundred feet from the end of the bridge, far less than the one-quarter mile plaintiff described in his testimony. Even assuming the incident did occur in that area, defendant's evidence also established that there had been no complaints or reports of a drop-off on the Craig Street bridge. Finally, there is no evidence to establish that the Michigan Avenue bridge could have been the area where plaintiff experienced the alleged drop-off.

In order to establish actionable negligence, plaintiff must show the existence of a duty, a breach of that duty, and injury resulting proximately therefrom. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282. Pursuant to R.C. 5501.11, ODOT has the responsibility to construct and maintain highways in a safe and reasonable manner. However, it is not an insurer of the safety of public highways; its duty is to maintain its highways in a reasonably safe condition. *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App.3d 723, 730, citing *Knickel v. Dept. of Transportation* (1976), 49 Ohio App.2d 335. Further, no duty can be imposed unless plaintiff can demonstrate that ODOT had either actual or constructive notice of an unreasonably hazardous condition. *Presley v. Norwood* (1973), 36 Ohio St.2d 29; *McClellan v. Ohio Dept. of Transp.* (1986), 34 Ohio App.3d 247.

Based on the totality of the evidence in this case, the court finds that plaintiff has failed to prove by a preponderance of the evidence that ODOT had either actual or constructive prior notice of any defect on I-280 in the area where the incident is alleged to have occurred. The evidence shows that the Greenbelt Parkway area was very heavily traveled and that ODOT had received no complaints regarding a defect in the areas in question. The evidence also shows that, although it was late evening when the incident occurred, there were no adverse weather conditions and the road was dry and clear. Further, plaintiff admitted that he had driven through this zone numerous times, and had even done so a few days prior to this incident. In short, plaintiff has failed to prove his claim of negligence.

Accordingly, judgment shall be rendered in favor of defendant.

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the 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.

FRED J. SHOEMAKER
Judge

Entry cc:

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