

precautions were taken to notify motorists of the painting activity. According to defendant, the painting operation consisted of applying a solid white painted edge line on the shoulder area of the roadway surface. The painting was described as a, "moving work zone," which complied with directives outlined in the Manual of Traffic Control for Construction and Maintenance Operations for that type of operation. Defendant explained the equipment used for the painting included a lead paint truck, a paint striper, and a follow truck. Other evidence indicates the operation consisted of a paint striper truck and two follow pick-up trucks. All trucks involved were equipped with "Wet Paint" signs. Additionally, defendant maintained "Wet Pant" signs and traffic control cones were positioned throughout the painting area to notify motorists of this activity on US Route 127. Defendant insisted all required equipment and signage were in place to perform the December 2, 2004 edge line painting.

{¶ 3} Defendant submitted a written statement from DOT employee C. Dean Renner, who supervised the December 2, 2004, painting operation on US Route 127. Renner noted the painting operation consisted of a paint striper truck and two other pickup trucks. According to Renner, the striper was equipped with two wet paint signs and arrows pointing to the white edge line. Renner also recollected the follow pickup trucks were equipped with wet paint signs and strobe lights. Renner wrote, "[t]he first pickup truck was following 500' to 1000' feet behind striper put out wet paint signs at every intersection and curves, with orange cones also set out between each intersection, the second pickup waited back at Young Rd. on US-127 and waited till the paint was dry then picked up the wet paint signs and the cone as the paint dried."

{¶ 4} Defendant asserted adequate warning was provided to motorists of the December 2, 2004, painting activity. Defendant

denied breaching any duty of care owed to plaintiff in conducting the edge line painting. Defendant contended plaintiff failed to produce sufficient evidence to establish his property damage was proximately caused by any negligent act or omission on the part of DOT personnel.

{¶ 5} Plaintiff insisted his truck was damaged as a proximate result of defendant's negligence. Plaintiff maintained he did not observe any signs, traffic cones, or follow pickup trucks notifying him of the painting operation. Plaintiff asserted the only traffic control device he noticed was a lead truck followed by "extensive traffic." Plaintiff stated, "[t]he paint striper and follow truck were nowhere to be seen by following traffic." Therefore, plaintiff surmised defendant failed to adequately warn motorists of the edge line painting.

{¶ 6} Plaintiff also disputed Dean Renner's statement regarding stationary traffic cones and signs. Plaintiff stated he did not see any signs or traffic cones.¹ Plaintiff concluded the cones and signs were never in place or not placed at proper locations or they were picked up before the paint was dry. Furthermore, plaintiff disputed Renner's statement in regard to the location of the painting. Renner recollected edge lines were painted "from Young Rd. 9.74 m.m. to Celina Corp. 12.58." Plaintiff recalled he had already traveled over wet paint before he reached Younger Road.² Plaintiff additionally recalled he observed "white line sprayed in the side ditch just north of State Route 219. (Far south of where Mr. Renner claims to have started.)"

¹ Plaintiff filed a response on February 14, 2005.

² Plaintiff pointed out the correct identification of the roadway is Younger Road not Young Road as referenced by Dean Renner. Defendant's documentary evidence shows edge line painting was performed on US Route 127 on December 2, 2004, from milepost 9.74 to milepost 12.58.

{¶ 7} Finally, plaintiff contended defendant was negligent in failing to leave signs and cones in place long enough for paint to dry before removing these warning devices. Plaintiff contended signs and cones, if they were utilized, were removed before edge line paint dried. Plaintiff submitted evidence showing weather conditions in Mercer County on December 2, 2004, at 8:00 a.m. were cloudy with a temperature of 29 degrees. The high temperature for the day reached 46 degrees. Based on this information, plaintiff speculated DOT personnel may have prematurely removed any warning devices before edge line paint had time to dry under the described weather conditions. Plaintiff professed he heeded all traffic control and warning signs he observed on December 2, 2004.

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

{¶ 9} 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. A failure to exercise ordinary care may be shown in situations where motorists do not receive adequate or effective advisement of DOT painting activity. See *Hosmer v. Ohio Department of Transportation* (2003), 2002-08301-AD, 2003-Ohio-1921. In the instant claim, plaintiff and defendant disagree about the posting of signs and markers. Plaintiff stated he did not believe there were any markers in place to make him aware of wet paint on the roadway. Defendant asserted stationary cones and "Wet Paint" signs were in position to advise motorists of the roadway painting. Defendant

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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RDK/laa
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