

[Cite as *Lauer v. Ohio Dept. of Transp.*, 2005-Ohio-7097.]

IN THE COURT OF CLAIMS OF OHIO

KEVIN LAUER :
Plaintiff :
v. : CASE NO. 2005-09014-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Kevin Lauer, filed a complaint alleging his automobile was damaged when he drove over freshly painted centerlines on "State Route 23, just north of Powell Road in Southern Delaware County." Plaintiff related he was unaware that the yellow centerline on Route 23 had been freshly painted because the workers performing the painting operation had failed to warn motorists of the painting activity. Plaintiff insisted he did not receive any notice or warning of the centerline painting as he approached the site. Plaintiff did not indicate if paint crews and painting vehicles were present on the roadway at the time his car allegedly received paint damage. Initially, plaintiff stated this paint damage incident occurred between 9:00 and 10:00 a.m. on September 30, 2004.

{¶ 2} 2) Plaintiff has contended defendant, Department of Transportation ("DOT"), should be responsible for the damage to his car. Plaintiff asserted DOT personnel were conducting painting operations on Route 23 and failed to provide adequate notice and protection to motorists using the roadway at the time the painting

was being conducted. Plaintiff seeks recovery of automotive repair costs in the amount of \$2,257.31. The filing fee was paid.

{¶ 2} 3) Defendant denied any liability in this matter. Defendant explained no DOT personnel were painting roadway centerlines on the highway location plaintiff provided on September 30, 2004. Defendant located the site of plaintiff's incident "at approximately milepost 1.39 on US 23 in Delaware County." Defendant denied any DOT painting operation was conducted on US Route 23 on September 30, 2004. Defendant's records show a pavement centerline marking (painting) was conducted on US Route 23 between mileposts 1.39 and 2.75 on May 17, 2004. Defendant maintained this May 17, 2004, painting activity, "was for white paint" and plaintiff incident was with yellow paint.

{¶ 3} 4) In his response to defendant's investigation report, plaintiff advised he inadvertently provided an incorrect date of the alleged paint overspray occurrence on his complaint. Plaintiff recollected the date his car received paint damage was actually May 17, 2004, the day DOT performed centerline painting on US Route 23 in Delaware County. Plaintiff disputed defendant's assertion that the May 17, 2004, pavement centerline marking operation used only white paint. Plaintiff reasoned centerline marking would include yellow paint which is consistent with the paint damage on his vehicle. Other than his own assertion, plaintiff did not provide substantiating evidence to show he did not receive adequate notice from DOT of any roadway painting activity on US Route 23.

CONCLUSIONS OF LAW

{¶ 4} 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;

journal.

DANIEL R. BORCHERT
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DRB/RDK/laa
11/17
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