

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

KENNETH LARIMER

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2006-04725-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

{¶ 1} On June 15, 2006, plaintiff, Kenneth Larimer, was driving his Peterbilt semi-truck on State Route 309 in Hardin County, when he was stopped by an employee of defendant, Ohio State Highway Patrol (OSHP), for a speeding violation. OSHP employee, Trooper McGlashan, driving a patrol car, initiated the traffic stop. Plaintiff pointed out that after he stopped his truck along the roadside and McGlashan stopped defendant's patrol car, McGlashan got out of the patrol car and approached the stopped truck from the passenger side. Plaintiff stated when McGlashan reached the passenger side of his truck the trooper, "attempted to yank the door open" and then, "he backed away from (the) door and indicated to roll down (the) window and unlock (the) door." Plaintiff recalled when he unlocked the truck door, McGlashan vigorously pulled the truck door open and requested plaintiff produce his driver's license along with other pertinent documents. McGlashan returned to the patrol car upon receiving documents from plaintiff. Plaintiff related after McGlashan was initially handed the documents, he, "slammed the door but it didn't shut." According to plaintiff, McGlashan returned to the patrol car to fill out paperwork without even acknowledging the truck door was not shut. Plaintiff noted he then tried to close his truck door and the door would not lock.

{¶ 2} After writing a speeding citation, McGlashan returned from the patrol car to plaintiff's truck. Plaintiff recollected he then informed McGlashan the latch on his

truck door was broken and he accused McGlashan of breaking the latch by slamming the door. Plaintiff recalled McGlashan then replied, "In my experience you have to slam the door of a big truck in order to shut it." Plaintiff asserted McGlashan, after making this statement, tried to close the truck door, but the door would not latch. Plaintiff subsequently made a telephone report of the incident involving the truck door latch to McGlashan's superior officer, Lieutenant Jerrod A. Savidge. A written report of the incident was compiled by Savidge from the telephone conversation with plaintiff. Plaintiff later filed this complaint seeking to recover \$308.67, the estimated cost of repairing a door latch on a Peterbilt truck. Plaintiff contended he suffered the damage to his truck door as a proximate cause of negligence on the part of defendant's employee in attempting to open and close the truck door. The filing fee was paid.

{¶ 3} Defendant denied plaintiff's truck door latch was broken by OSHP employee, Trooper McGlashan, during the course of a traffic stop on June 15, 2006. Defendant not only denied McGlashan's conduct resulted in damage to plaintiff's property, but denied the "door latch could not be properly closed and secured," at the time of the traffic stop incident. Defendant acknowledged plaintiff was stopped by Trooper McGlashan for speeding. However, defendant denied McGlashan had any trouble opening the door to plaintiff's truck upon the initial approach to the vehicle. Defendant noted when McGlashan closed the truck door it did not latch. Defendant explained when Trooper McGlashan returned to plaintiff's vehicle a second time after completing citation paperwork, plaintiff was standing outside his truck insisting the passenger truck door would not close properly. Defendant asserted McGlashan examined the door latch and did not notice any problem. According to defendant, McGlashan then tried to close the truck door, but "there appeared to be some obstruction to it." Defendant related no obstruction was found and successful attempts were made by both plaintiff and McGlashan to close the truck door. Defendant observed plaintiff's truck door was "secured and closed" upon completing of the traffic stop. Consequently, defendant contended plaintiff failed to prove his property was damaged by any act of OSHP Trooper McGlashan.

{¶ 4} Defendant provided a written narrative (dated June 20, 2006) of the June 15, 2006, occurrence from OSHP Trooper McGlashan. McGlashan, in his narrative, acknowledged he initially made a right side approach to plaintiff's truck upon the June

15, 2006, traffic stop McGlashan wrote, “[w]hen I got (to) the passenger door the driver rolled the window down.” McGlashan explained he then opened the truck door himself, citing officer safety concerns. McGlashan denied pulling hard on the truck door and recollected the door opened without difficulty. After advising plaintiff he would receive a citation, McGlashan related he tried to close the truck door, but it would not latch. McGlashan noted, when he returned to the truck a second time upon completing a speeding citation, plaintiff was standing outside the vehicle at the passenger door. McGlashan stated plaintiff asked him what he had done to the truck door and he replied he had not done anything but open the door. McGlashan recalled plaintiff kept complaining the truck door was not shutting.

{¶ 5} The following recorded narrative of McGlashan’s recollection of events has been included verbatim:

{¶ 6} “I looked at the door; it appeared to be in working order. I asked the driver it [sic] there was something in the way. The driver then moved some things over that were on the passenger side floor board. He then tried to shut the door, again it did not latch. The driver stated he would have to bungee cord the door shut. I then looked at the latch which also appeared to be in working order. I then tried to shut the door. It felt as though there was something was in the way and keeping the door from latching. I tried to shut the door a little harder, the door shut and latched. The driver then opened the door back up. He then tried to shut it and was unsuccessful. I then tried again shutting it with successful results. The driver then again opened it stating that was not right. I advised the driver my experience with the passenger door on semi’s you have to shut them hard. I again shut the door with successful results. The driver once again opened the door. The driver then shut the door harder with successful results.”

{¶ 7} In his response to defendant’s investigation report, plaintiff reasserted the door latch to his truck was broken by Trooper McGlashan trying to slam the door shut numerous times. Plaintiff related the door would not latch after McGlashan’s first and second attempts to close it. Plaintiff insisted McGlashan “slammed the door real hard.”

Plaintiff contended the truck door never did shut after McGlashan initially opened it. Plaintiff stated, “the door was working properly” before Trooper McGlashan opened and shut the door on June 15, 2006. Plaintiff explained he never uses the passenger side door due to the fact he is a solo truck driver. Plaintiff denied the truck door had never been abused prior to June 15, 2006. Plaintiff submitted a photograph that he maintained depicted cracked paint on the truck’s door latch. The trier of fact examined this submitted photograph. The trier of fact finds the photograph depicts cracked white paint running from the door handle at the bottom of the truck door. This photograph therefore, has very little probative value regarding the issue of defendant’s liability for the acts of Trooper McGlashan on June 15, 2006.

{¶ 8} Plaintiff filed additional photographs depicting the condition of his truck. Plaintiff also filed another repair estimate dated September 5, 2006. The September 5, 2006, repair estimate includes costs estimates for repair the right passenger side door and replacement/installation of glass, mirror, and door handle. This estimate of repair amounts to \$873.00. A written statement on the repair estimate includes an observation by someone concluding the damage to plaintiff’s truck door was caused by slamming the door extremely hard without using the door handle. Plaintiff included a statement with the photographic and repair estimate filings. In this statement, plaintiff professed he possessed definite knowledge of the proper way of opening and closing the doors on his truck, i.d., using the door handle when closing. Plaintiff again asserted the door on his truck was damaged due to Trooper McGlashan slamming the door without using the handle to close it. The submitted photographs depict views of the right passenger door of plaintiff’s truck. These photographs show areas where paint is cracked on the inside and outside sections of the truck door.

{¶ 9} Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff’s property in the performance of official acts. *Vastine, et al. v. State Highway Patrol*, 2002-10305-AD, 2003-Ohio-1681. Also, defendant may bear liability for property damage caused by the negligent acts of OSHP personnel. See *Moro v. Ohio State Highway Patrol* (2002), 2002-04429-AD, 2002-Ohio-4635.

{¶ 10} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant’s negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. This court, as trier of

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fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. Plaintiff has failed to produce sufficient evidence to establish any act of defendant's employee caused the property damage to his truck. See *Fuciarelli v. Ohio State Patrol Marion Post*, 2002-03911-AD, 2002-Ohio-4627.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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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Plaintiff, Pro se

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For Defendant

RDK/laa
9/20
Filed 9/29/06

Sent to S.C. reporter 6/21/07