

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

BETTY MURPHY, et al.

Case No. 2006-07163-AD

Plaintiffs

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPARTMENT OF
TRANSPORTATION

Defendant

{¶1} On October 24, 2006, between 9:00 and 10:00 a.m., plaintiff, Betty Murphy, was traveling east on State Route 47 between Sidney and Port Jefferson, Ohio, when she approached a truck in her lane of travel painting white edge lines on the right side of the roadway. A second smaller truck was following directly behind the paint truck. Both trucks involved in this painting operation were owned by defendant, Department of Transportation (“DOT”) and operated by DOT personnel. Plaintiff related that as she traveled behind the DOT trucks, the smaller trail truck would periodically “pass the paint truck and block the side streets that connected with Hwy. 47.” Plaintiff further related that when she had an opportunity she passed the DOT paint truck and continued on to her destination. Plaintiff explained when she arrived at her home later on October 24, 2006, she observed white paint on the right side of her automobile, a 2005 Nissan Altima.

{¶2} Plaintiff submitted photographs depicting the white paint damage to her vehicle. These photographs show the bulk of the paint damage is confined to the car’s right side wheel wells and bottom right side molding along the door lines. Also, random paint splatters appear in various areas on the right side of plaintiff’s automobile. The photographic evidence tends to show what the vehicle damage was when its tires contacted with fresh wet white paint.

{¶3} Both plaintiff, Betty Murphy and plaintiff, Steve R. Murphy, have contended

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the 2005 Nissan Altima was damaged as a result of negligence on the part of defendant in performing the October 24, 2006, edge line painting operation. Plaintiffs have therefore, filed this complaint seeking to recover \$1,065.54, the cost of paint removal. The filing fee was paid.

{¶4} Defendant acknowledged DOT crews conducted edge line painting activities on State Route 47 between Sidney and Port Jefferson, Ohio during the daylight morning hours of October 24, 2006. However, defendant denied any liability in this matter. Defendant insisted 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. Defendant pointed out the follow truck by passing the paint truck and stopping at side streets to prevent side street traffic from entering the painting area was functioning in the appropriate manner designed for such an operation. Defendant noted all trucks involved were equipped with “Wet Paint” signs. Additionally, defendant maintained “Wet Paint” signs and traffic control cones were positioned throughout the painting area to notify motorists of this painting activity. Defendant insisted all required equipment and signage were in place to safely perform the October 24, 2006 edge line painting. Defendant argued plaintiff failed to produce sufficient evidence to prove her property damage was caused by any negligent act or omission on the part of the DOT crew.

{¶5} 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.

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{¶6} Plaintiffs have the burden of proof to show their property damage was the direct result of a 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*, 2002-08301-AD, 2003-Ohio-1921. In the instant claim, plaintiff, Betty Murphy, acknowledged she was aware of the DOT painting operation and was in a position to observe all facets of this moving work zone. Adequate warning is not an issue in this claim.

{¶7} Plaintiffs have not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiffs, or that plaintiffs' injury was proximately caused by defendant's negligence. Plaintiffs have failed to show that their property damage was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Conversely, evidence directs the court to conclude plaintiff, Betty Murphy's own negligent driving was the cause of their property damage. Therefore, this claim is denied.

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DEPARTMENT OF
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ENTRY OF ADMINISTRATIVE
DETERMINATION

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 plaintiffs. 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:

Betty Murphy
Steve R. Murphy
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RDK/laa
1/29
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