[Cite as *DeLamatter v. Ohio Dept. of Transp.*, 2007-Ohio-6387.]

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

DONNA H. DE LAMATTER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-01355-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} During the daylight morning hours of November 8, 2006, personnel of defendant, Department of Transportation ("DOT"), conducted a roadway painting operation from mileposts 18.03 to 19.63 on State Route 3 in Medina County. The painting project involved the application of yellow paint from a moving vehicle onto the roadway centerline. Defendant described the painting operation as a moving work zone involving at least three vehicles, a lead vehicle, a line marking vehicle, and a trail vehicle. Defendant asserted all required traffic control devices, including warning signs, were utilized during the November 8, 2006, centerline painting. Defendant explained the yellow paint used for the operation dries within two minutes after application at a temperature of 53E F. Temperatures ranged from 48.2E F to 55E F during the time paint could have been applied to State Route 3.

{¶2} Plaintiff, Donna H. DeLamatter, stated she was driving on State Route 3 on November 7 and November 9, 2006, either the day before or the day after the DOT centerline painting operation was conducted. Plaintiff recalled as she was traveling on State Route 3 she crossed the yellow painted centerline to pass a car. Plaintiff acknowledged she observed the yellow paint demarking the centerline was fresh, but

denied noticing any traffic control such as cones, flaggers, or "Wet Paint" signs to advise motorists of the paint condition. Plaintiff related she, "subsequently notice that I had yellow paint splattered all over my red car."

{¶3} Plaintiff implied the paint damage to her automobile was proximately caused by negligence on the part of defendant in failing to warn her of the freshly applied paint on the roadway. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of $493.90, representing paint removal costs, car rental expenses, and inconvenience. The $25.00 filing fee was paid and plaintiff requests reimbursement of that amount in addition to her damage claim.

{¶4} Defendant denied any liability in this matter. Defendant asserted all proper traffic control was in place on November 8, 2006, to notify motorists of the painting project on State Route 3. Defendant contended plaintiff has failed to prove any negligent act or omission on the part of DOT was the proximate cause of her property damage. Defendant suggested plaintiff voluntarily chose to drive over the freshly painted centerline and therefore, her own actions resulted in the property damage incident.

{¶5} Plaintiff filed a response noting she drove her vehicle on State Route 3 on November 7 and November 9, 2006, and the automobile was paint damaged on either of those dates. Plaintiff contended that if painting was performed on November 8, 2006, then the paint applied was defective. Conversely, plaintiff disputed defendant's records indicating painting was performed on November 8, 2006. Plaintiff related, "[t]he entire stretch of road that was painted was loaded with smeared paint, not just where I crossed over the legal line." Defendant submitted a photograph depicting the centerline of State Route 3 showing various areas where the yellow centerline paint had streaked from the centerline. The photograph depiction is consistent with the act of a motorist driving across a freshly painted centerline and returning the to original highway lane of travel. Plaintiff essentially maintained she drove over wet paint on November 9, 2006, that had been applied on November 8, 2006. Plaintiff reasserted the centerline paint

applied by DOT did not dry properly within twenty odd hours and consequently, damaged her car. Plaintiff alleged defendant was negligent by applying slow drying paint to the roadway and then failing to warn motorists of the wet paint condition.

CONCLUSIONS OF LAW

{¶6} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶7} Plaintiff has the burden of proof to show her property damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. 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 a DOT painting activity. See *Hosmer v. Ohio Department of Transportation,* Ct. of Cl. No. 2002-08301-AD, 2003-Ohio-1921. In the instant claim, plaintiff has acknowledged she voluntarily drove over an area where she, "could see the paint was new." Adequate warning is not an issue in this claim.

{¶8} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her, or that her injury was proximately caused by defendant's negligence. Plaintiff has failed to show that her 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. *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's own negligent driving was the cause of her property damage. Therefore, this claim is denied. See *Rolfes v. Ohio Dept. of Transportation*, Ct. of Cl.

No. 2004-09941-AD, 2005-Ohio-840.

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

DONNA H. DELAMATTER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-01355-AD

Deputy Clerk Daniel R. Borchert

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.

_____

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Donna H. DeLamatter
3406 Scotswood Circle
Richfield, Ohio 44286

James G. Beasley, Director
Department of Transportation
1980 West Broad Street

Columbus, Ohio 43223

RDK/laa
8/9
Filed 9/6/07
Sent to S.C. Reporter 11/29/07