[Cite as *Barnett v. Ohio Dept. of Transp.*, 2009-Ohio-1589.]

Court of Claims of Ohio

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RANDY BARNETT

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-08809-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} Plaintiff, Randy Barnett, filed this action against defendant, Department of Transportation (DOT), alleging that his 2003 Pontiac Aztec was damaged by debris propelled from a tractor mower operated by a DOT employee, who was mowing the median of US Route 52. Plaintiff recalled that he was traveling west on US Route 52 at approximately 2:10 p.m. on June 24, 2008, when he approached a tractor mowing the roadway median area and as his car traveled nearer to the mowing operation, "a piece of metal came flying out of the mower," striking the front end of the vehicle. Plaintiff noted that he immediately stopped his automobile in the median after the incident and got out to examine any damage. Plaintiff stated that he observed "a hole ripped in the front end cover of my car, and also a dent in my door." Plaintiff maintained that he subsequently discovered the metal debris had punctured the bumper and air conditioning condenser of his automobile. Plaintiff contended that the damage to his vehicle was proximately caused by negligence on the part of defendant in conducting mowing operations along US Route 52 in Lawrence County. Plaintiff seeks recovery of

damages in the amount of $2,396.17, the total cost of automotive repair resulting from the June 24, 2008 incident. Plaintiff submitted the $25.00 filing fee and requested reimbursement of that cost along with his damage claim. Additionally, plaintiff requested reimbursement for costs he expended in obtaining a copy of the accident report of the June 24, 2008 damage occurrence as well as costs for photographs. These expenses are not compensable in a claim of this type and are consequently denied.

{¶ 2} Plaintiff submitted several photographs depicting the piece of metal that damage his car. The damage-causing object appears to be a metal bar about one inch wide, approximately one-quarter inch thick and multiple feet in length. The metal bar is bent and twisted in several places with various scrape marks along its side and edge. Plaintiff suggested that the photographs depicting the scrape type marks on the metal object constitute clear evidence that the object was struck with defendant's mower blade. Plaintiff stated that the piece of metal "was definitely hit by the mower because the rod has a shiny spot the shape of a blade and is also bent 'J' shaped."

{¶ 3} Plaintiff filed a written statement from Tonya Davidson, a witness to the damage incident who was a passenger in plaintiff's automobile. Davidson noted that she and plaintiff were conversing about the mowing operation they observed in the median of US Route 52. Davidson recorded that "at the time I seen what looked like a metal rod or a mower blade come out from the mower, and hit the front of the car."

{¶ 4} Within minutes of the damage occurrence a local Ohio State Highway Patrol (OSHP) trooper arrived at the scene, investigated the incident, and compiled a Traffic Crash Report. Contained in the Traffic Crash Report were written witness statements from both plaintiff and the DOT tractor mower operator, Phillip R. Robinson, Jr. Defendant submitted a copy of the entire OSHP Traffic Crash Report.

{¶ 5} In his statement, plaintiff wrote the following narrative description: "I was west on US 52 going about 55 mph. I was in the left lane and I was coming up on an ODOT tractor that was mowing the median. When I was about 20-30 feet from the mower a piece of metal shot out from the mower in front of my car. I hit my brakes, but there was traffic in front of me, beside me, and behind me. I hit the piece of metal and then it came from behind my vehicle." In response to an OSHP question regarding the origin of the damage-causing metal debris, plaintiff responded that he "saw it come out

from the mower."

{¶ 6} In his statement reported to OSHP, DOT mower operator, Robinson wrote his recollections of the June 24, 2008 incident. Robinson recorded the following narrative: "I was westbound in the median strip of US 52 mowing the grass in the median. I saw a piece of metal in the road and it was about even with my front tires. I stopped and was going to get out of my tractor and remove it from the road. There were some cars that had swerved to miss the metal. A red Pontiac hit the metal and drug it about 60 yards before I could get to it." When asked if he had initially struck the piece of metal with the DOT mower, Robinson reported, "It looks like it did, but (I) didn't see it come out of the mower or hear the blades hit it." Additionally, Robinson estimated the piece of metal had been laying on the traveled portion of US Route 52 for a period of three to five minutes before the object was struck by plaintiff's vehicle. In response to a question about traffic conditions in the two westbound lanes of US Route 52, Robinson recalled "the right hand lane was clear" (plaintiff was traveling in the left lane).

{¶ 7} Defendant denied liability in this matter based on the contention that plaintiff failed to prove his property damage was caused by an negligent act or omission attributable to DOT personnel. Defendant explained that both plaintiff's vehicle and the DOT tractor mower were traveling in the same direction with the left side of plaintiff's vehicle closest in proximity to the blades of the tractor mower. Defendant referenced the OSHP Traffic Crash Report and a photograph of plaintiff's car, which both point out damage to the right side of the 2003 Pontiac Aztec. The photograph depicts paint scratches and nicks on the bottom and middle right side front door of the vehicle. Defendant reasoned that if the piece of metal was propelled onto the roadway by the DOT mower as both plaintiff and his witness stated then the damage to the Pontiac Aztec would have occurred on the vehicle's left side not the right side. Defendant suggested that "[t]he photos show that it wasn't possible to do the damage on the right side of plaintiff's car." Defendant submitted a written statement from DOT mower operator, Phillip Robinson compiled on August 12, 2008, seven weeks after the incident forming the basis of this claim. Robinson wrote: "I don't know if the tractor threw the piece of metal in the road or not, . . . didn't hear or see it come from the mower. I saw him (plaintiff) hit the metal because I was stopped and getting (off) the tractor to move it. That is when he (plaintiff) run over it and drug it about 60 yards then it come out the

back of his car." Defendant asserted the evidence does not support a finding that Robinson deposited the piece of metal onto the roadway with the DOT tractor mower.

{¶ 8} On December 11, 2008, plaintiff filed a response to defendant's investigation report. He relates the same facts as contained in the complaint and disputes that he drug the metal debris 60 yards. He contends that he drug it, at the most 30, yards.

{¶ 9} The evidence in this claim shows that the front of plaintiff's Pontiac Aztec initially collided with an elongated piece of twisted metal bar laying in the left westbound lane of US Route 52. The photographic evidence establishes that the piece of metal was multiple feet in length, perhaps six feet or more. The photographic evidence also establishes that plaintiff's vehicle received damage to the front end cover, front bumper cover, and air condition condenser as well as the right side. The OSHP Traffic Crash Report lists the "Point of Impact" where the piece of metal first contacted with plaintiff's vehicle as "center front." Considering the point of impact evidence and the physical characteristics of the damage-causing debris, a piece of twisted metal bar at least six feet in length; the trier of fact finds it highly probable the debris was deposited on the roadway by a DOT mower and in all probability inflicted all damage displayed, including right side damage to the vehicle. Both plaintiff and his front passenger, Tonya Davidson stated that they saw the piece of metal being propelled onto the highway by the DOT tractor mower. The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court does find plaintiff's assertions and the assertions of Tonya Davidson persuasive in regard to the origin of the metal debris condition.

{¶ 10} 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.

{¶ 11} Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. However, proof or notice of a dangerous condition is not necessary when defendant's own agents actively cause such conditions. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861. In the instant claim, evidence has established that the DOT mower operator deposited a piece of metal debris on the roadway thereby creating a dangerous condition.

{¶ 12} "If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 13} This court, as the trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477. In the instant claim, sufficient evidence has been presented to show that defendant's mower operator breached a duty of care which resulted in plaintiff's property damage. Therefore, defendant is liable to plaintiff in the amount of $2,396.17, plus the $25.00 filing fee, which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $2,421.17, which includes the filing fee. Court costs are assessed against defendant.

MILES C. DURFEY

Entry cc:

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RDK/laa
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