

IN THE COURT OF CLAIMS OF OHIO

TAMMIE MAYER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00938-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Tammie Mayer filed a complaint with this Court on December 2, 2014 against the Ohio Department of Transportation (hereinafter “ODOT”). In her complaint, Ms. Mayer asserts that she was traveling southbound on US 23 in Lawrence County on July 27, 2014 when her 2000 Toyota Sienna struck a concrete curb median as she was approaching the Ashland Bridge crossing over into Kentucky. Claimant further stated that the bridge was not very visible from the road due to trees covering the bridge and that there were no visible indications or other warnings of a concrete median in the road. As a result of striking the median, the claimant’s vehicle tires were all flattened and three of her tire rims were bent. Her van had to be towed to a local repair shop and she was forced to spend the night in a local hotel while awaiting the repairs to her vehicle.

{¶2} In an Investigation Report filed February 20, 2015, the defendant ODOT did not dispute the facts of the complaint as to the occurrence of the accident and the damages that claimant’s vehicle received. ODOT does, however, dispute its responsibility for the accident and for the damages thus incurred by the claimant.

{¶3} In the Investigation Report, ODOT points out that there is indeed a concrete curb median along the left side of the road to direct traffic to turn right across the

Ashland Bridge. The agency also provided photographs showing large painted arrows on the pavement to notify traffic to turn right. Thus, the agency contends that the approach to the bridge is clearly marked and had claimant turned right onto the bridge as indicated by the median, she would not have had an accident. Therefore, the accident was caused by claimant's failure to turn where indicated and not by insufficient traffic control devices or negligent highway design.

{¶4} In a response filed with the Court on April 6, 2015, the claimant Mayer disputes the accuracy of the photographs provided by ODOT to the Court. Additionally, she asserts that a guardrail with appropriate markings would have prevented the accident.

{¶5} In order to prevail in a claim of this type against ODOT, the claimant must prove that ODOT was either negligent in the way it maintains its roadway, or as in this case, was negligent in the way it designed and constructed the roadway in question.

{¶6} Under Ohio law, ODOT has the duty to maintain its highways in a reasonably safe condition for the motoring public. However, the agency is not an absolute insurer of the safety of motorists while they travel on its highways.

{¶7} In any action alleging negligent design, the burden of proof is on a claimant to show by a preponderance of the evidence that the Department breached its duty of care to the motoring public in the way the road was either designed and/or constructed. In this case, the Court is forced to choose between the positions asserted by either a layperson or the state agency charged with the statutory responsibility to design, construct, and maintain the state's roadways. Absent other evidence, the Court has no alternative but to defer to the judgment of the administrative agency charged by law with this responsibility.

{¶8} As claimant has failed to meet her burden of proof, the complaint filed December 2, 2014 is hereby DISMISSED.

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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.

MARK H. REED
Clerk

Entry cc:

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