

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

CONNIE MACHAN, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2012-05681

Judge Patrick M. McGrath
Magistrate Holly True Shaver

JUDGMENT ENTRY

{¶1} On September 29-30, 2014, a trial was held for the purpose of determining liability only. On March 31, 2015, the magistrate issued a decision recommending judgment in favor of defendant.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On April 9, 2015, plaintiffs filed a motion for an extension of time to file objections to the magistrate’s decision. That motion was granted and plaintiffs were given an extension until April 28, 2015, to file objections. Plaintiffs filed objections on April 28, 2015. On May 14, 2015, defendant, Ohio Department of Transportation (ODOT) filed a response to plaintiffs’ objections. Plaintiffs raise the following two (2) objections:

Objection 1: The Magistrate Incorrectly Concluded that Plaintiff Failed to Prove that Defendant Breached its Duty to Maintain its Highways in a Reasonably Safe Condition.

{¶3} In her March 31, 2015 decision, the magistrate concluded that it was

permissible and reasonable for defendant to plow snow against a bridge parapet during a snow storm.

{¶4} Plaintiffs argue that ODOT was negligent in plowing snow up against the parapet, because, according to plaintiffs' expert, Mr. Balgowan, and the American Association of State Highway and Transportation Officials (AASHTO) it creates a hazardous condition. However, based on photographs taken after the Wynne¹ accident, the mound of snow ODOT pushed onto the left shoulder of the bridge appears to be several feet away from the parapet wall. Therefore, any snow up against the wall was the result of natural accumulation.

{¶5} Plaintiffs also assert that the magistrate's decision permits ODOT to operate in conflict with its own policies and procedures. According to plaintiffs, ODOT implemented policies that train drivers to "straight plow" snow to the end of a bridge similar to the one on which this incident occurred. Straight plowing involves turning the plow blade so that it does not push snow off to one side. The driver is then to turn the snow plow blade back at an angle once the bridge is passed, so snow is pushed off to the side without the chance of windrowing off into nearby travel lanes. Trial testimony revealed that ODOT chose not to straight plow this portion, and also that straight plowing was not necessarily required over all bridges at all times. Further, photos indicate that all three travel lanes of the bridge were plowed, plus a portion of the left shoulder. The evidence shows that this particular shoulder is substantially larger than average. The parapet was approximately twenty-six (26) feet away from the roadway. Therefore, the snow bank in the shoulder was more than twenty feet away from the travelled portion of the road. The magistrate correctly found that ODOT was not negligent for plowing in this manner considering the extra space in the shoulder. Also she correctly found that this method is consistent with ODOT policies which state that

the interstate roadways (not the shoulders) are to be given first priority, plowing from right to left.

{¶6} Several alternative methods of plowing were offered by plaintiffs' expert, including a suggestion that ODOT should have used eight (8) trucks, plowing in tandem, to clear both the road and the shoulder at the same time, continuously, during the snowstorm. He opined that ODOT should have used front-end loaders to haul away the snow on the shoulders of the bridge during the storm, as opposed to waiting until after the storm subsided. He also suggested that ODOT should have plowed the snow starting from the left, all the way to the parapet, across all three lanes, and off of the right shoulder.

{¶7} All of these suggestions involve decisions by ODOT for which it is entitled to discretionary immunity. Therefore, even if ODOT violated its own policies, which this court finds it did not, ODOT's decision as to how to allocate its resources for snow plowing operations, based upon the number of workers and equipment it has available is clearly an executive or planning function. Therefore, the magistrate was correct in finding that ODOT is entitled to immunity for the discretionary decisions it made when plowing the bridge on I-271 during a snow storm.

{¶8} Therefore, plaintiffs' first objection is OVERRULED.

Objection 2: The Magistrate Incorrectly Concluded that Plaintiff's Failure to Maintain Reasonable Control of her Vehicle was the Sole and Proximate Cause of her injuries.

{¶9} The magistrate concluded that the plaintiff's² injuries were more severe because of the snow ramp. However, contrary to plaintiff's assertion, this finding is not at odds with her conclusion that it was plaintiff's failure to maintain control of her vehicle

¹See companion case, *Wynne v. ODOT*, 2012-05690. Wynne's accident occurred three hours prior to plaintiff's on the same bridge. Even though the *Wynne* case was dismissed, the police report and photos taken after that accident were admitted as exhibits in this matter.

²"Plaintiff" shall be used to refer to Connie Machan throughout this decision.

which caused her to leave the travelled portion of the road and strike the “snow ramp” on the left side of the bridge. The evidence shows that plaintiff lost control of her vehicle in the travelled portion of the road when she decided to change lanes. This section of road was plowed and treated by defendant prior to the incident. While her injuries may have been more severe due to the snow in the shoulder, which allowed her vehicle to traverse the parapet wall, she had a duty to maintain control of her vehicle while on the travelled portion of the road and failed to do so. She would not have encountered the “snow ramp” had she maintained control. Therefore, her failure to control was the sole and proximate cause of her injuries, which were exacerbated by the presence of snow in the shoulder.

{¶10} Plaintiffs argue that the magistrate’s decision contains no analysis regarding whether or not defendant created a hazard on the side of the bridge; a hazard which plaintiffs argue was the cause of plaintiff’s injuries. Such analysis was not necessary for the magistrate’s finding. The Supreme Court of Ohio has consistently held that ODOT is not liable when a driver encounters a hazard off the travelled portion of the road. See *Turner v. Ohio Bell*, 118 Ohio St. 3d 215, 2008-Ohio-2010. ODOT may only be liable for a hazard off the travelled portion of the roadway, when the condition creates a hazard on the travelled portion of the roadway. See *Steele v. Ohio Dept. of Transp.*, 162 Ohio App. 3d 30, 2005-Ohio-3276, *Harris v. Ohio Dept. of Transp.*, 83 Ohio App. 3d 125, 614 N.E.2d 779 (10th Dist. 1992). Therefore, even if ODOT created a hazard on the shoulder of the bridge, plaintiff would not have been injured had she stayed on the travelled portion of the road. There is no evidence that the snow in the left shoulder of this bridge created a hazard more than 20 feet away, on the roadway.

{¶11} Accordingly, plaintiffs’ second objection is OVERRULED.

{¶12} Upon review of the record, the magistrate’s decision and the objections, the court finds that the magistrate has properly determined the factual issues and

appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. 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.

PATRICK M. MCGRATH
Judge

cc:

Jacob Beausay
495 South High Street, Suite 300
Columbus, Ohio 43215

James P. Dinsmore
Peter E. DeMarco
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Filed June 25, 2015
Sent to S.C. Reporter 2/3/16