

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

CRAIG LAYFIELD

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-10692-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On September 10, 2008, personnel of defendant, Department of Transportation (“DOT”), conducted roadway painting activities on State Route 7 in the vicinity of Marietta, Ohio in Washington County. Defendant maintained the painting project involved the application of white paint from a moving vehicle onto the roadway edgeline. Defendant described the painting operation as a moving work zone involving two vehicles, a paint striper truck and a follow truck. Defendant explained all traffic control requirements, including warning signs, were utilized during the September 10, 2008 edgeline painting. Defendant reported, “[t]here were signs stating ‘Wet Paint’ in the follow truck throughout the operation on SR 7.”

{¶ 2} On September 10, 2008, at approximately 8:05 a.m., plaintiff, Craig Layfield, was driving his 2005 Chrysler Pacifica south on State Route 7 in Washington County, when he approached the DOT edgeline painting operation. Plaintiff noted he observed DOT personnel “painting of center white lines on Ohio Route 7 south bound at Emert Plant, Marietta, Ohio.” Plaintiff stated defendant was conducting the painting

operation “[w]ithout warning signs of road work or painting in progress.” Plaintiff denied defendant displayed any warning or notice of the painting activity “except for (the) truck that was following (the) paint truck, for traffic to change lanes (less than 50 yds behind).” Apparently, the follow truck did display some kind of notification sign. Plaintiff pointed out that when he did change lanes “paint was thrown on both sides of my vehicle clear down to the rear bumper.”

{¶ 3} The next day, September 11, 2008 at approximately 4:35 p.m., plaintiff drove his paint damaged vehicle to the local Ohio State Highway Patrol (“OSHP”) Post to file a report of the September 10, 2008 paint overspray incident. In the report to the OSHP (copy submitted), plaintiff filed a written statement regarding his recollection of the September 10, 2008 paint damage incident. Plaintiff recorded he “[w]as driving south on route 7 by (the) Mermet plant when I came upon a state truck with (an) arrow on to change lanes.” Plaintiff noted when he observed the direction arrow on the DOT follow truck he drove from the right southbound lane onto the left southbound lane. Plaintiff related that when he traveled from the left lane to the right lane he “drove (through) wet paint that wasn’t marked or had no warning it was fresh paint.” According to plaintiff the fresh paint that he drove over had been applied to the roadway delineating the right and left southbound lanes of State Route 7.

{¶ 4} Photographs of plaintiff’s 2005 Chrysler Pacifica were taken incident to the filing of the OSHP report of the paint damage incident. The photographs depict various aspects of plaintiff’s automobile were submitted by defendant. The trier of fact, upon reviewing the photographs, notes minor white paint damage can be seen on the right front and right rear quarter panel and right rear tire of plaintiff’s car. No paint damage is noticeable on the left side, front, or back of plaintiff’s vehicle. Defendant pointed out the investigating OSHP trooper who compiled the incident report recorded that observable paint on plaintiff’s vehicle “was minor” with “(a) spray type pattern on the right rear quarter panel and also some paint in wheel tread and wheel well.”

{¶ 5} Plaintiff contended his car received paint damage on the “front fender, fender walls, front doors, back doors, rear quarter panels, (and) back bumper.” Plaintiff asserted his property damage was proximately caused by negligence on the part of defendant in directing him to change driving lanes and consequently travel over fresh white paint delineating the left and right southbound lanes of State Route 7. Plaintiff

filed this complaint seeking to recover \$2,054.38, the estimated cost of removing paint from the 2005 Chrysler Pacifica. Plaintiff submitted a written estimate for paint removal costs. The \$25.00 filing fee was paid.

{¶ 6} Defendant acknowledged DOT personnel conducted painting operations on State Route 7 on September 10, 2008. However, defendant specifically denied any DOT personnel acted negligently in performing the painting activity. Defendant explained all traffic control requirements for roadway painting were observed that are mandated by the DOT Manual of Traffic Control for Construction and Maintenance Operations (“Manual”). Defendant related a DOT crew “was painting white edge lines on SR 7 on the day of plaintiff’s alleged incident.” Defendant submitted a DOT record indicating edgeline painting was performed on State Route 7 in Washington County on September 10, 2008. Defendant stated “[p]laintiff mentions in his claim that the center lines (of State Route 7) were being painted but yellow paint is applied for center lines.”¹ Defendant insisted plaintiff received proper notice of the edgeline painting with defendant’s truck displaying “wet paint” signs. Defendant argued plaintiff failed to offer sufficient evidence to establish the paint damage to his vehicle was attributable to any negligent act or omission on the part of DOT.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} Plaintiff has the burden of proof to show his property damage was the direct result of failure of defendant’s agents to exercise ordinary care in conducting

¹ State Route 7 where DOT was painting on September 10, 2008 is a divided highway with two southbound lanes and two northbound lanes. Section 3B.04 of the DOT Manual covering certain roadway painting provides:

“Section 3B.04 *White Lane Line and Right Edge Line Pavement Markings and Warrants*

“Standard:

“When used, lane line pavement markings delineating the separation of traffic lanes that have the same direction of travel shall be white.”

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 acknowledged he discovered defendant was conducting painting operations, but asserted he was directed to drive over fresh white paint that had been applied to the roadway area delineating the left and right southbound lane of State Route 7. Conversely, defendant's evidence indicates DOT was painting the right southbound lane edgeline of State Route 7. Apparently proper notification signage was in place. Furthermore, the observable paint damage on plaintiff's vehicle is consistent with the contention that he drove over fresh paint on the roadway edgeline.

{¶ 9} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his injury was proximately caused by defendant's negligence. Plaintiff has failed to show that his 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 his property damage. Therefore, this claim is denied. See *Rolfes v. Ohio Dept. of Transportation*, Ct. of Cl. No. 2004-09941-AD, 2005-Ohio-840; *Delamatter v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2007-01355-AD, 2007-Ohio-6387.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
3/20
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