

[Cite as *Rolfes v. Ohio Dept. of Transp.*, 2005-Ohio-840.]

IN THE COURT OF CLAIMS OF OHIO

VIRGINIA ROLFES :  
Plaintiff :  
v. : CASE NO. 2004-09941-AD  
OHIO DEPT. TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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{¶ 1} During the morning hours of October 21, 2004, plaintiff, Virginia Rolfes, drove her 2000 Cadillac STS on State Route 29 and State Route 703 to return to her residence from an appointment. Upon arriving at her home in Celina, Ohio, plaintiff parked her car in her garage. On October 22, 2004, plaintiff examined her parked vehicle and discovered white paint spattered along the passenger side body and wheel wells of the automobile. Plaintiff recalled she had seen a paint striping truck on the roadway when she drove home on October 21, 2004. Plaintiff assumed the paint truck she saw was a State vehicle owned by defendant, Department of Transportation ("DOT") and operated by DOT personnel. Plaintiff recalled seeing a paint striper truck at two locations; Market Street/703 East, Celina, Ohio and east on State Route 29 near a bridge. Plaintiff had apparently driven over wet paint at some location on State Route 29 or State Route 703 in Mercer County. Plaintiff stated she did not notice any signs or markers in position to warn motorists of any roadway painting activity on October 21, 2004. Plaintiff filed this complaint seeking to recover \$1,180.99, the cost incurred to have paint removed from her automobile. Plaintiff suggested the paint damage to her vehicle

was the proximate cause of negligence on the part of defendant in failing to post adequate warning of a roadway painting operation. The filing fee was paid.

{¶ 2} Defendant acknowledged DOT personnel were engaged in painting white edge lines on State Route 703 in Mercer County on October 21, 2004. However, defendant denied it breached any duty to provide adequate warning to motorists of the edge line painting operation. Defendant maintained that all traffic control requirements were utilized during the course of the edge line painting on State Route 703. The painting operation was described as a "moving work zone," which complied with directives outlined in the Manual of Traffic Control for Construction and Maintenance Operations for that type of operation. Defendant explained the equipment used for the painting included a lead paint truck, a paint striper, and a follow truck. All trucks were equipped with "Wet Paint" signs. Additionally, defendant maintained "Wet Paint" signs and traffic control cones were positioned throughout the painting area to notify motorists of this activity on State Route 703. Defendant insisted all required equipment and signage were in place to perform the October 21, 2004, edge line painting.

{¶ 3} Defendant submitted a statement from DOT employee, Terry Miller, identified as a District Traffic Supervisor. Miller acknowledged DOT employees painted edge lines on State Route 703 in Mercer County. Miller noted the painting operation consisted of a paint striper and two follow trucks. Miller stated, "on the back of the striper there is two wet paint signs with arrows pointing down towards the edge line" [sic]. According to Miller, traffic control cones were positioned in the painting area and cones displaying wet paint signs were also posted along the paint route.

{¶ 4} Defendant insisted proper traffic control was in place, including stationary "Wet Paint" signs and cones during the

operation. Defendant asserted adequate precautions were utilized to protect motorists from paint damage. Defendant explained plaintiff was sufficiently warned and notified of the edge line painting. Consequently, defendant contended plaintiff's own negligence in driving over wet paint was the proximate cause of her damage.

{¶ 5} 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. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} 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. Ohio 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* (2003), 2002-08301-AD. In the instant claim, plaintiff and defendant disagree about the posting of signs and markers. Plaintiff stated she did not believe there were any markers in place to make her aware of wet paint on the roadway. Defendant asserted stationary cones and "Wet Paint" signs were in position to advise motorists of the roadway painting. Defendant also maintained the DOT vehicles involved in the painting project displayed "Wet Paint" signs as further warning of the activity to passing motorists.

{¶ 7} After reviewing all evidence presented, the court finds, plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant's agents.

Conversely, evidence directs the court to conclude plaintiff's own negligent driving was the cause of her property damage. Therefore, this claim is denied.

IN THE COURT OF CLAIMS OF OHIO

VIRGINIA ROLFES	:	
Plaintiff	:	
v.	:	CASE NO. 2004-09941-AD
OHIO DEPT. TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa

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