

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

NICHOLAS NOONAN

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-04091-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} At approximately 7:30 p.m., on March 21, 2006, during a snowfall, Kevin Noonan was driving his 2000 Kia Sportage on Interstate 74 in Hamilton County when he was involved in a motor vehicle collision with a salt truck owned by defendant, Department of Transportation (DOT), and operated by a DOT employee. It was recorded the Kia Sportage was traveling at 55 mph at the time of the collision. Also involved in the collision was a passenger in the Noonan vehicle, Emily Murdock. Plaintiff, Nicholas Noonan, the father of Kevin Noonan, filed this complaint asserting the DOT salt truck driver caused the March 21, 2006, motor vehicle collision. It was asserted that immediately before the collision, Kevin Noonan was driving in the far left eastbound lane of Interstate 74 and the DOT vehicle was also traveling east on Interstate 74 ahead of the Noonan vehicle, but in the middle lane of the roadway. Plaintiff claimed the collision occurred when the DOT salt truck abruptly changed driving lanes and struck the vehicle Kevin Noonan was driving. Plaintiff further claimed that when Kevin Noonan brought his vehicle to a stop after the collision with the DOT truck, the Kia Sportage was struck again by another vehicle. The Kia Sportage sustained damage to the center front of the vehicle. The DOT salt truck was damaged in the left rear. Cincinnati Police Department personnel investigated this motor vehicle accident. Kevin Noonan was cited for a violation of R.C. 4511.21(A), the Assured

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Clear Distance Ahead (“ACDA”) statute.¹ DOT employee, Jon Milesky, the driver of the salt truck was not cited for any traffic violation incident to the March 21, 2006, motor vehicle collision. Kevin Noonan’s Kia Sportage was covered for repairs under an insurance policy maintained by his father, Nicholas Noonan, the plaintiff in this action. Plaintiff, Nicholas Noonan, filed this complaint seeking to recover \$500, his insurance coverage deductible for automotive repairs needed after the March 21, 2006, incident. Plaintiff asserted the damage to the Kia Sportage was proximately caused by negligence on the part of Jon Milesky while operating the DOT salt truck. The filing fee was paid.

{¶2} The claim file is devoid of any direct statement from either Kevin Noonan or the passenger in his vehicle, Emily Murdock, witnesses to the events forming the basis of this claim. Plaintiff filed a statement noting Kevin Noonan informed both him and an investigating officer of the Cincinnati Police Department the pertinent facts of the March 21, 2006, motor vehicle collision. Plaintiff maintained Kevin Noonan and Emily Murdock were traveling in Kevin’s vehicle east on Interstate 74 in the left “high speed lane,” while the DOT salt truck, operated by Jon Milesky, was stopped in the middle eastbound roadway lane to the right of the Kia Sportage. Plaintiff explained, when the Kevin Noonan vehicle “was about one-fourth of the way past the salt truck,” (estimated speed 55 mph), the DOT truck driver began to pull the DOT vehicle into the left roadway lane where Kevin Noonan was driving. The trier of fact understands plaintiff is purporting the DOT driver, Milesky, made an abrupt turning maneuver into the left roadway lane from a complete stop at the time the Kia Sportage was moving beside the DOT vehicle at a speed of 55 mph. Plaintiff related the described maneuver of the salt truck presented Kevin Noonan with a choice of driving

¹ R.C. 4511.21(A) provides:

“(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

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off the roadway edge “to either hit the concrete (median) barrier or take a hit from the truck.” Plaintiff noted Kevin Noonan tried to avoid a collision with the DOT truck, but did not elaborate on what type of avoidance measures were taken. Plaintiff pointed out defendant’s truck first impacted with the Kia Sportage and did not stop immediately after the collision but continued traveling east on Interstate 74. Plaintiff recorded, “[a]nother (motorist), caught up with the salt truck driver and informed him that he had hit someone.” Plaintiff did not submit any statement from this motorist or any other motorists stopped in traffic who may have witnessed the incident. According to plaintiff, the DOT driver returned to the scene only after being informed about this collision.

{¶13} Defendant submitted a statement from Jon D. Milesky, the DOT salt truck driver. The statement dated March 22, 2006, recorded Milesky’s recollection of the March 21, 2006, motor vehicle collision incident involving DOT’s truck and Kevin Noonan’s Kia Sportage. Milesky related he was salting Interstate 74 eastbound on March 21, 2006, at approximately 7:00 p.m., when he, “came up on stopped traffic,” in the right lane of the roadway. After approaching the stopped traffic, Milesky stated he, “changed lanes to go around and try to get salt down.” According to Milesky, as he was driving in the left high speed lane of the roadway, “a Kia Sportage slid or ran into the back of the [DOT] truck.” Milesky noted that after this collision he assisted in helping the occupants out of the Kia Sportage and into the DOT salt truck. Milesky pointed out the Kia Sportage was struck by other vehicles two separate times after the occupants left the vehicle following the initial collision. Milesky did not specifically state or make any implication he left the scene immediately after the collision with Kevin Noonan’s vehicle. Milesky did relate he was told by an investigating Cincinnati Police Officer he was permitted to leave the area while the collision investigation was still being conducted. Milesky was not charged with any traffic violation incident to the March 21, 2006, collision event.

{¶14} Plaintiff maintained Milesky and not his son, Kevin Noonan, should have been cited as a result of the motor vehicle collision. Plaintiff observed, “it is clear that the

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driver of the salt truck should have been charged with an illegal lane change.” Plaintiff offered this observation despite the fact he did not produce any statements from any witnesses regarding the driving conduct of Milesky immediately prior to the collision. Plaintiff acknowledged Kevin Noonan was cited for a violation of the Assured Clear Distance Ahead statute and was subsequently convicted of the charge. Plaintiff characterized the state actions involved as government agencies protecting another governmental agency. Plaintiff reasserted the at-fault driver in the March 21, 2006, collision occurrence was DOT driver Milesky and not his son, Kevin Noonan.

{¶15} Conversely, defendant contended all facts have established the sole cause of the March 21, 2006, collision was Kevin Noonan’s negligent driving in violation of the ACDA statute. Defendant asserted no evidence has been presented to prove the March 21, 2006, damage occurrence was caused by any act other than Kevin Noonan’s inability to maintain an assured clear distance ahead while operating his Kia Sportage on Interstate 74 during a period of snowfall.

{¶16} Based on the evidence presented, the court concludes the sole proximate cause of the March 21, 2006, motor vehicle collision was the negligent driving of Kevin Noonan; specifically, his failure to maintain an assured clear distance ahead, a violation of R.C. 4511.21(A). The assured clear distance ahead statute is a requirement of the law, the violation of which constitutes negligence per se. *Estate of Eyler v. Dedomenic* (1995), 107 Ohio App. 3d 860. A finding of negligence per se for violating 4511.21(A) depends on whether evidence has been produced to establish a driver collided with an object that was ahead of him in the path of travel, was stationary or moving in the same direction as the driver, was readily discernible, and did not suddenly appear in the driver’s path. *Estate of Eyler*, id. The trier of fact determines issues of conflicting evidence offered concerning a necessary element constituting a violation of the assured clear distance ahead rule. *Tomlinson v. Cincinnati* (1983), 4 Ohio St. 3d 66; *Pangle v. Joyce* (1996), 76 Ohio St. 3d 389. The assured clear distance ahead rule does not apply when another vehicle suddenly

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enters the lane of travel of a following motorist at a distance insufficient or impossible to allow the following motorist in the exercise of ordinary care to avoid a collision. *Pangler*, id. Plaintiff in the instant claim, contended defendant's driver abruptly moved into Kevin Noonan's lane of travel making it impossible for him in the exercise or ordinary care to maintain an assured clear distance ahead and avoid a collision. Defendant's driver Milesky stated he changed lanes from a stop and was driving in the same traffic lane as Kevin Noonan when Noonan's vehicle struck defendant's truck. Milesky denied suddenly moving into the lane of travel where Kevin Noonan was driving his Kia Sportage. Kevin Noonan was charged with a violation of R.C. 4511.21(A) and subsequently pleaded guilty to the violation. Plaintiff did not introduce any witness statements to refute the existing evidence that a violation of the ACDA statute occurred. The court, consequently, determines the sole cause of the collision damage represented in this claim was the negligent driving act of Kevin Noonan, and therefore, plaintiff's claim is denied.

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DEPARTMENT OF
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ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Nicholas Noonan
P.O. Box 18565
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Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
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RDK/laa
1/3
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