

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

DAVID SLARK, et al.

Plaintiffs

v.

DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-09186-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On December 10, 2007, plaintiffs, David and Pearl Slark, filed a complaint against defendant, Department of Transportation. Plaintiff's assert on November 1, 2007, while leaving the parking lot of the Price Insurance Company on Bridge Street in Chillicothe, Ohio, they struck a sign while backing up which caused damage to their vehicle. Plaintiffs allege that the negligent placement of the sign caused their damage. Plaintiffs seek damages in the amount of \$867.57.

{¶ 2} Defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} "Defendant has performed an investigation of this site and this portion of Bridge Street was recently paved and widened. The project started May 29, 2007 and was completed by October 10, 2007. (See Exhibit A) As part of this process, a 'green space' was created between the edge of the pavement of the Price Insurance Company parking lot and the highway. This area is designated State right-of-way and not intended for vehicle use. (See attached photos) The sign designating the turn lanes ahead was erected in the 'green space' created adjacent to the Price Insurance building

and directly behind their parking lot.

{¶ 4} “Defendant also asserts that the signing was necessary and reasonable for the safety of the traveling public and done in a manner consistent with normal standards. O.R.C. Chapter 55 gives Defendant the authority to maintain the state highway system and place appropriate signs thereon. Defendant contends that it is given statutory authority to place the subject sign and Defendant did not create a legal nuisance.

{¶ 5} “In sum, Defendant performed a project on Bridge Street to pave and widen the streets. The project was completed prior to Plaintiffs incident. Initially, this sign was located closer to the Price Insurance Company - where it may have been struck by another user of that building. The sign was relocated during the project on or about September 27, 2007, prior to Plaintiff striking it and well within ODOT’s right-of-way.”

{¶ 6} Ohio Revised Code Section 5521.01 in pertinent part states:

{¶ 7} “The director also may erect regulatory and warning signs, as defined in the manual adopted under section 4511.09 of the Revised Code, on any section of a state highway within the limits of a village.”

{¶ 8} Accordingly, defendant had the statutory authority to erect the sign at its current location. In the case at bar, the sign was open and obvious. The placement of the sign did not create a public nuisance, since defendant had statutory authority to place the sign on its right-of-way for the benefit of the motoring public. No liability shall attach to the defendant when plaintiff sustains an injury due to a condition that is open and obvious. *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d 642, 1992-Ohio-42, 539 N.E. 2d 614.

{¶ 9} Ohio Revised Code 4511.38(A) in pertinent part states:

{¶ 10} “(A) No person shall start a vehicle, streetcar, or trackless trolley which is stopped, standing, or parked until such movement can be made with reasonable safety.

{¶ 11} “Before backing, operators of vehicle, streetcars, or trackless trolleys shall give ample warning, and while backing they shall exercise vigilance not to injure person or property on the street or highway.”

{¶ 12} It appears plaintiffs’ negligence caused the property damage not the sign placement.

{¶ 13} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant’s motion to dismiss is GRANTED. Plaintiffs’ case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
12/9
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