

# 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

GARY D. SIMMONS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2006-01394

Judge Joseph T. Clark  
Magistrate Anderson M. Renick

## JUDGMENT ENTRY

{¶ 1} On March 13, 2009, the magistrate issued a decision recommending judgment for 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).” Plaintiff timely filed his objection.

{¶ 3} In his decision, the magistrate concluded that plaintiff’s negligence was the sole proximate cause of the accident. Plaintiff argues that the magistrate erred in concluding that plaintiff’s failure to avoid the collision was a complete bar to recovery rather than analyzing plaintiff’s comparative fault.

{¶ 4} In his decision, the magistrate made the following pertinent findings:

{¶ 5} “This case arises out of a motor vehicle collision involving plaintiff’s vehicle and a tractor-trailer driven by Spencer McKimmie, an employee of defendant, Ohio Department of Transportation (ODOT). The collision occurred at approximately 12:20

p.m. on February 2, 2005, at the intersection of State Route (SR) 104 and Moundsville Road in Ross County, Ohio. SR 104 is a two-lane divided highway that generally runs north and south.

{¶ 6} “McKimmie testified that he was hauling equipment on a “drop-deck” trailer and that the combined length of the truck and trailer was approximately 40 feet. According to McKimmie, he had observed plaintiff’s vehicle approaching the intersection prior to making a turn onto Moundsville Road and, at that time, he was confident that there was sufficient distance between the vehicles to allow him to safely exit the highway. McKimmie testified that, during his turn, he observed an automobile that had been traveling east on Moundsville Road proceed past the stop sign that was posted at SR 104, enter the intersection, and come to a stop in a position that prevented McKimmie from completing his turn. McKimmie stated that he slowly continued to proceed while the driver of the eastbound automobile backed up to allow McKimmie to complete the turn onto Moundsville Road.

{¶ 7} “Plaintiff testified that he was familiar with the roadway and he described the weather conditions as being clear and sunny. According to plaintiff, he was driving his pickup truck at a speed of 40 to 50 miles per hour in the southbound lane of SR 104 when he observed defendant’s truck heading northbound before it began a left turn across his lane of travel. Plaintiff recalled seeing the truck “hesitate in the intersection” during the turn. Plaintiff testified that he was unable to avoid a collision with the ODOT truck and that the front of his vehicle struck the right rear of defendant’s trailer.

{¶ 8} “\* \* \*

{¶ 9} “The weather was clear and sunny, and the highway was straight and level with no obstructions to obscure plaintiff’s view either of the intersection or of defendant’s 40-foot long tractor-trailer. Plaintiff estimated that the intersection was visible from a distance of approximately three-quarters of a mile as he was approaching. Plaintiff observed the ODOT truck hesitate in the intersection after its turn was impeded

by the eastbound vehicle that had unlawfully entered the intersection. According to his own testimony, plaintiff initially *continued to proceed at 50 to 55 mph* because he believed there was sufficient time for the truck to clear the intersection. Plaintiff had an opportunity either to apply his brakes or to take other evasive action to avoid a collision with the ODOT truck, but he failed to do so.” (Emphasis added.)

{¶ 10} The magistrate determined that McKimmie was operating his vehicle with due care and in a lawful manner while he completed his turn. According to plaintiff’s own testimony, he approached the intersection at 50-55 mph inasmuch as plaintiff had anticipated that the tractor-trailer would continue at its pace and clear the intersection. Plaintiff apparently continued on his path at a speed which exceeded his ability to adjust to the changed circumstances and to avoid the collision.

{¶ 11} Upon review of the record, the magistrate’s decision and the objection, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objection is 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 plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

---

JOSEPH T. CLARK  
Judge

cc:

Jennifer A. Adair  
Velda K. Hofacker Carr  
Assistant Attorneys General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

Paige J. McMahan  
42 East Fifth Street  
Chillicothe, Ohio 45601

Case No. 2006-01394

- 4 -

JUDGMENT ENTRY

SJM/cmd  
Filed July 7, 2009  
To S.C. reporter July 20, 2009