

# 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

MATTHEW DELUCA

Plaintiff

v.

BOWLING GREEN STATE  
UNIVERSITY

Defendant

Case No. 2007-05890-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} This action arose from a February 15, 2007 incident when an automobile owned and operated by plaintiff, Matthew DeLuca, collided with a bus owned by defendant, Bowling Green State University (“BGSU”) and operated by a BGSU employee, Karen Swartz. Plaintiff alleged defendant’s bus driver was at fault for the motor vehicle collision which occurred at the snow covered intersection of Napoleon and High Streets in Bowling Green. Consequently, plaintiff filed this complaint seeking to recover \$738.68, the cost of repairing body damage to his 1996 Dodge Avenger. The filing fee was paid.

{¶ 2} Plaintiff offered his own narrative description of the motor vehicle collision forming the basis of this claim. Plaintiff recalled he was traveling west on Napoleon Street approaching the intersection of Napoleon and High Street at approximately 8:00 p.m. on February 15, 2007. Napoleon is a two way street running east and west and High is a two way street running north and south. Traffic control at the southbound lane of High at the intersection of High and Napoleon consists of a stop sign. No traffic control is present for the westbound lane of Napoleon at the intersection of Napoleon and High. Posted speed limits on both streets is 25 mph. Plaintiff noted that as he was traveling west on Napoleon and approaching High he operated his right turn signal indicating his intent to make a right turn onto High Street. Plaintiff related he saw

defendant's 2004 Bluebird bus operated by Karen Swartz stopped at the stop sign in the southbound lane of High as he neared the intersection. Plaintiff stated, "[a]s I started turning, Karen (Swartz) attempted to turn left (onto Napoleon)." When Swartz made this left turn maneuver with defendant's bus, plaintiff recalled, "I saw that she cut off my space to turn, so I began to back away from the intersection while Karen continued her turn and struck my car." The collision caused damage to the left front fender, left side fender, and left headlight of plaintiff's car. Estimated speed of both vehicles on impact was 5 mph.

{¶ 3} Defendant denied liability in this matter asserting that plaintiff's negligent driving was greater than any negligence attributable to BGSU bus driver, Swartz. Defendant disputes plaintiff's version of the incident forming the basis of this claim, "to the extent that Plaintiff failed to include pertinent information about the road and intersection conditions" that existed on the night of February 15, 2007. Defendant apparently obtained information regarding road conditions from BGSU bus driver, Karen Swartz. Defendant did not provide a first hand statement from Swartz concerning her recollections of the events of February 15, 2007. Despite the absence of any statement from its bus driver, defendant explained Swartz offered that snow accumulation and snow removal attempts had created tall snow banks on both sides of High Street which narrowed traffic lanes down to a single lane at the intersection of Napoleon and High Street. In contrast to plaintiff's explanations of the events preceding the vehicle collision defendant offered: 1) BGSU bus driver Swartz stopped the bus at the intersection of Napoleon and High Streets waiting for plaintiff to make a right turn from Napoleon onto High; 2) plaintiff aborted the right turn attempt when he determined he had insufficient clearance space to turn from Napoleon onto High; 3) Plaintiff then made a hand motion directed at Swartz for her to make the left turn from High onto Napoleon, thereby creating room for plaintiff to successfully complete his right turn maneuver; 4) as Swartz turned the bus left plaintiff turned his car right; 5) plaintiff apparently then sensed he could not make the right turn so he stopped, put his car in reverse, and began backing

the vehicle onto Napoleon as Swartz continued to turn the BGSU bus left onto Napoleon; 6) while completing the left turn onto Napoleon, the BGSU bus scraped against plaintiff's car as he was backing the vehicle on Napoleon. Defendant maintained plaintiff's alleged act of motioning Swartz to proceed with a left turn from High Street onto Napoleon Street constituted express consent to yield the right of way. Furthermore, defendant contended plaintiff's driving maneuver of backing his car on Napoleon Street "increased the probability of a collision" and essentially amounted to more than 50% of the total negligence attributable under the facts of this claim when ascertaining fault for the collision.

{¶ 4} Defendant argued plaintiff failed to exercise reasonable care when he attempted to make a right turn and then backed his car after he discovered he could not safely complete the right turn from Napoleon Street onto High Street. Defendant cited the case of *Morris v. Bloomgren* (1933), 127 Ohio St. 147, 187 N.E. 2, noting the Ohio Supreme Court stated in the syllabus of their opinion:

{¶ 5} "The driver of a vehicle lawfully approaching from the right has the right to assume that the driver of the vehicle approaching from the left will obey the law by yielding the right of way. If however the former, just as he is approaching or entering the intersection, discovers that the latter is not yielding the right of way and has thereby placed himself in a perilous situation, it becomes the duty of the former to use ordinary care not to injure the latter after becoming aware of his perilous situation."

{¶ 6} Additionally, defendant related this court in *Bussard, et al. v. Ohio Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179, stated that, "However, having the right of way at an intersection does not relieve a driver from the duty to use reasonable caution when approaching or proceeding through an intersection." at 5. Defendant asserted plaintiff, under the facts of the instant claim, either voluntarily yielded the right of way to BGSU driver Swartz or he was aware Swartz was turning left and failed to exercise ordinary care to prevent a collision with defendant's vehicle.

{¶ 7} Alternatively, defendant contended plaintiff in attempting to turn right from Napoleon onto High “where there was not enough space to do so,” constituted a negligent driving act, which was then further compounded by plaintiff’s decision to “back his vehicle the wrong way, against traffic, onto Napoleon Street.” Defendant argued plaintiff’s driving decisions amounted to more than 50% of the total negligence established and therefore plaintiff is barred from any recovery. Defendant also suggested BGSU bus driver Swartz owed no duty to plaintiff to avoid a collision with plaintiff’s car.

{¶ 8} Plaintiff filed a response insisting defendant should bear liability for his property damage. Plaintiff again provided a written narrative of his recollection of the facts involved in the February 15, 2007 motor vehicle collision. Plaintiff recorded the following account:

{¶ 9} “Around 8:00pm on February 15, 2007, I was driving west bound on Napoleon Road. As I was approaching High street, I turned on my right hand turn signal and began slowing down. I began to attempt a right hand turn onto High street when I noticed the bus turning onto Napoleon Road east bound, failing to yield the right of way, which cut off my space to complete my turn that I was already making. I saw that I wasn’t going to be able to finish my turn, so I reversed away from the intersection trying to give the bus driver space to complete the 90 degree turn that wasn’t necessary to make while I was attempting my right turn. The driver continued with her turn and then struck my car damaging my driver’s side front fender.”

{¶ 10} Based on the best evidence available, the eyewitness statement of plaintiff, the court determines plaintiff exercised reasonable care while driving and the sole proximate cause of the damage to plaintiff’s car was the negligent driving maneuver of defendant’s driver Swartz. The failure to Swartz to yield the right of way as

required by law<sup>1</sup> constitutes negligence per se and resulting liability. Consequently, defendant is liable to plaintiff for the damages claimed \$738.68, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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<sup>1</sup> R.C. 4511.42(A) states:

“(Right -of-way rule when turning left.)

“(A) The operator a vehicle, streetcar, or trackless trolley intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle, streetcar, or trackless trolley approaching from the opposite direction, whenever the approaching vehicle, streetcar, or trackless trolley is within the intersection or so close to the intersection, alley, private road, or driveway as to constitute an immediate hazard.”

R.C. 4511.43(A) provides:

“Right-of-way rule at through highways, stop signs, yield signs.

“(A) Except when directed to proceed by a law enforcement officer, every driver of a vehicle or trackless trolley approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.”

Case No. 2006-03532-AD

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MEMORANDUM DECISION

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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 plaintiff in the amount of \$763.68, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa

6/27

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