

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001687-MR

BRANDON TAYLOR, Personal
Representative of the Estate
of SHERRY TAYLOR

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 02-CI-00114

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF HIGHWAYS,
TRANSPORTATION CABINET and
COMMONWEALTH OF KENTUCKY,
BOARD OF CLAIMS

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

EMBERTON, CHIEF JUDGE. Sherry Taylor was killed after the vehicle she was operating struck a concrete bridge located in Daviess County, Kentucky. Her representative filed a claim with the Kentucky Board of Claims alleging that the Commonwealth of Kentucky, Department of Highways, Transportation Cabinet was

negligent for failure to place a guardrail along the highway adjacent to the bridge wall. The Board of Claims denied the claim and the Daviess Circuit Court affirmed.

The decision of the Board of Claims must be affirmed if its findings of fact "are supported by substantial evidence of probative value" and the law was correctly applied.¹ An action against the Department of Highways for negligence is not actionable (1) absent a duty on the part of the Department; (2) a breach of that duty; and (3) a consequent injury.²

The Department had a duty to maintain the highway "in a reasonably safe condition for those members of the traveling public exercising due care for their own safety."³ Its duty, however, does not include guarding against all reasonably foreseeable and reasonably preventable harm to travelers, including those who fail to exercise reasonable care but whose lack of due care is not so extreme as to be unforeseeable.⁴

The Board concluded that the bridge wall was located thirty-nine inches from the white edge line of the road, and was not obscured so as to be concealed from the view of the traveler exercising reasonable care. Taylor had driven the roadway

¹ Department of Education v. Commonwealth, Ky. App., 798 S.W.2d 464 (1990).

² Commonwealth of Kentucky, Transportation Cabinet v. Shadrick, Ky., 956 S.W.2d 898 (1997).

³ Id. at 900.

⁴ Id.

regularly and the roadway surface was dry. Although it is foreseeable that a driver could fail to use reasonable care causing the vehicle to leave the roadway and strike the bridge, the Department does not have a duty to prevent such dangers.⁵

Appellant argues that the requirements of the American Association of State Highway and Transportation Officials (AASHTO) that provides guidelines and specifications for guardrail placement along roadways is applicable. Two Department employees testified that the standards are applicable only to new construction, reconstruction or rehabilitation, and that the bridge in this case was not within any of these categories. Although the evidence established that the Department uses the AASHTO guidelines in maintaining roadways constructed prior its publication, it does not, and because of fiscal and time constraints, it cannot rebuild every roadway to meet the guidelines. We find no error in the finding that the Department did not owe Taylor a duty to prevent her from causing herself harm as a result of her own lack of care.

The opinion and order of the Daviess Circuit Court is affirmed.

⁵ Id.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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