

[Cite as *Milburn-Shook v. Ohio State Hwy. Patrol*, 2016-Ohio-7207.]

VICTORIA MILBURN-SHOOK

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2016-00149-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On February 29, 2016, Victoria Milburn-Shook (hereinafter “plaintiff”) filed a complaint in this Court against the Ohio State Highway Patrol (hereinafter “OSHP”). In her complaint, plaintiff alleges that on January 21, 2016 she was a passenger in her vehicle that her boyfriend, Zachery Boggs, was driving. Around 6:47 p.m., a state trooper, Sergeant Timberlake, pulled the vehicle over because Mr. Boggs was following the semi-truck ahead of him too closely. Sgt. Timberlake then informed plaintiff that her car would be towed and she would receive it back after she appeared in court and the judge released the vehicle.

{¶2} According to the complaint, when plaintiff went to the New Philadelphia Municipal Court on January 28, 2016, the judge informed her that she did not require a release from the court because Sgt. Timberlake had not filled out the paperwork correctly. Specifically, according to plaintiff, Sgt. Timberlake failed to check a box on a BMV 2255 form next to a sentence that indicated plaintiff’s car was towed because of a wrongful entrustment violation (Plaintiff’s complaint, Exhibit B).

{¶3} The next day, plaintiff went to the tow yard to retrieve her vehicle; however, the tow yard employees informed her that she needed the required release. Plaintiff went back to the court and court officials contacted OSHP. Per the complaint, OSHP then informed plaintiff that she could recover some of the tow yard costs by filing a complaint in this Court. In conclusion, plaintiff seeks to recover the costs related to her car being stored in the tow yard for a week.

{¶4} OSHP filed an investigation report on April 28, 2016, disputing plaintiff's claims that it was negligent. It noted that the law explaining wrongful entrustment was clearly printed on the back of the BMV 2255 form Sgt. Timberlake provided to plaintiff, which defendant argues that he also explained to plaintiff. This form also described why the plaintiff's vehicle was towed and why she could not recover it until she made her court appearance and received a release from the judge. OSHP states that the failure to check the box on the form only amounts to *de minimis* oversight. This omission, in OSHP's opinion, does not change the fact that Sgt. Timberlake's actions of ordering plaintiff's vehicle to be towed for a wrongful entrustment violation and requiring a court-ordered release for the vehicle were lawful. Furthermore, OSHP disputes that it told plaintiff that she could be reimbursed for Sgt. Timberlake's error. In sum, it is OSHP's position that it did not commit any negligence that caused plaintiff to incur damages via towing and storage fees.

{¶5} In order to prevail in a claim of negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that defendant's breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81. "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 2003-Ohio-5333, ¶ 41 (2nd Dist.).

{¶6} This Court agrees with OSHP's position. Here, plaintiff has failed to provide enough facts for the Court to ascertain that by not checking the box on the BMV 2255 form, Sergeant Timberlake breached a duty of care toward plaintiff and that breach proximately caused her injuries. In fact, the evidence demonstrates that plaintiff was aware that Mr. Boggs was driving her vehicle despite his license being suspended. Additionally, Sgt. Timberlake gave her a copy of the ticket which indicated that Mr. Boggs was following a semi-truck at 1.5 car lengths and that she had wrongfully

entrusted her vehicle to him. (Plaintiff’s complaint, Exhibit A). She also received a copy of the BMV 2255 form, which explained why her vehicle was towed and stored. (Plaintiff’s complaint, Exhibit B). Lastly, she received a copy of the towing receipt, which also indicated that her vehicle would be held until a court-issued release. (Plaintiff’s complaint, Exhibit D). In short, the reasons behind the vehicle seizure and storage are legitimate and plaintiff has not indicated otherwise. Moreover, she has provided no evidence to support her allegation that a judge in the New Philadelphia Municipal Court indicated that a court-ordered release was not required because Sgt. Timberlake did not properly fill out the paperwork. Consequently, judgment is rendered in defendant’s favor.

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OHIO STATE HIGHWAY PATROL

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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 defendant. Court costs shall be absorbed by the Court.

MARK H. REED
Clerk

Entry cc:

Case No. 2016-00149-AD

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MEMORANDUM DECISION

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