

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

BRYAN M. LIENARD, Personal Representative  
of the Estate of Delphine Lienard, deceased,

UNPUBLISHED  
June 14, 1996

Appellant,

v

No. 173389  
LC No. 91-1396a5-CM

MICHIGAN DEPARTMENT OF  
TRANSPORTATION,

Appellee.

---

Before: Michael J. Kelly, P.J., and Bandstra and S.B. Miller,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of defendant following a bench trial in the court of claims, issued February 11, 1994.

**FACTS**

Plaintiff sued for the wrongful death of decedent, Delphine Lienard, plaintiff's wife, as a result of a highway accident in the early morning hours of March 11, 1991. Plaintiff was riding as a back seat passenger in the family's GMAC (Jimmy). Plaintiff was stretched out in the back because of leg pain and was dozing as his wife drove. They were returning from Higgins Lake to their home in Utica, so plaintiff could see his doctor. The weather was snowy and the roadway slippery and snow-covered in spots. At the Holly Road interchange on I-75 in Oakland County, the Jimmy left the road after crossing an overpass, drove into the median, overturned, rolled and crashed. Delphine Lienard was killed, Bryan Lienard survived. A Michigan State Trooper received the call to assist at 4:40 a.m. and arrived at the scene at 5:04 a.m. The temperature was 24 degrees and the roadway wet with slippery spots but the trooper was able to drive at or above highway speed.

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

The trooper in charge, named Allen, assisted by his partner, conducted an investigation at the scene. Photos were taken of tracks leading from the south end of the bridge in the middle lane that curved off the roadway. There were tread marks in the tracks. The trooper observed that the tracks led to the median and concluded that the wheel was turned too sharply causing the vehicle to roll four or five times. Trooper Allen concluded that the car was not skidding when it left the bridge, as tread marks were evident in the tracks. He also found that the bridge deck was more slippery than the road surface and testified that the bridge deck was very slippery.

Plaintiff's complaint was brought pursuant to the highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102). Plaintiff's complaint alleged that defendant was guilty of negligence in not replacing an out-dated and otherwise defective "Watch for Ice on Bridge" sign which failed to give plaintiff's decedent warning or opportunity to take precautionary action on the ice-covered bridge.

Plaintiff's expert witnesses testified that the existing sign did not conform to current uniform traffic control device specifications because it was too small and lacked retroreflectivity. Defendant did not dispute this testimony and stipulated that the sign needed replacement and had been in that condition for more than thirty days. A second expert called by plaintiff was of the opinion that the sign was not conspicuous and failed to attract attention. He also was of the opinion that the decedent would have expected to see a sign large enough and bright enough to attract attention consistent with other bridge warning signs. This is significant as drivers expect consistency and/or uniformity according to the expert.

Defendant's expert testified that "some ordinary prudent drivers would see the sign, [while] many would not". Other testimony was that the bridge could be seen at least 300 feet away at night under low beam illumination. Both plaintiff and defense experts agreed that the vehicle driven by decedent was traveling between thirty-five and forty-five miles per hour when it left the road. A weather expert testified that the temperature was 28 to 33 degrees at the time of the accident and that a light snow had been falling for about six hours, on and off in the area. This expert did not believe that the ice on the bridge was preferential. The trial court made detailed and specific findings of fact as well as conclusions of law. We affirm.

The trial court's finding that the roadway was reasonably safe for travel regardless of the condition of the "Watch for Ice on Bridge" sign was not clearly erroneous. A finding of fact is not clearly erroneous unless there is no evidence to support it. MCR 2.613(C), *Tallman v Cheboygan Area Schools*, 183 Mich App 123; 254 NW2d 171 91990); *Tuttle v Dept of State Highways*, 397 Mich 44; 243 NW2d 244 (1976). Plaintiff's claim of negligence required proof by a preponderance of evidence that defendant, MDOT, breached a duty owing to the plaintiff. Plaintiff proved that defendant's warning sign was defective, however, plaintiff was further required to prove by a preponderance of evidence that defendant's breach of duty was a proximate cause of the injury and damages to the plaintiff. The breach must be a cause in fact and requires proof that "but for" the defendant's negligence the injury would not have occurred. *Skinner v Square D Co.*, 445 Mich 153, 163; 516 NW2d 475 (1994).

Defendant admits that the “Watch for ice on bridge” sign needed replacement and wasn’t up to standards, however, these facts didn’t compel a finding that it was inadequate under the facts or was a proximate cause of the crash. The evidence established that plaintiff’s decedent could have seen the sign at 300 feet with low beam headlights, despite its negligible retroreflectivity and even if the sign was not seen until the driver was passing it she still had 800 feet to respond before reaching the bridge. Other factual testimony of the experts and witness establish that the bridge deck being snow-covered as opposed to the roadway being wet, the driver could have and should have seen the bridge at three hundred feet.

The trial court found that the plaintiff failed to establish by a preponderance of evidence that Mrs. Lienard’s death was a proximate result of the MDOT’s failure to update and install a “Watch for Ice on Bridge” sign that conformed to existing uniform traffic control device specifications. The trial court’s findings of fact were not clearly erroneous.

Affirmed.

/s/ Michael J. Kelly  
/s/ Richard P. Bandstra  
/s/ Stephen B. Miller