

knee and the resulting rehabilitation. Perkins also provided testimony regarding her pain, suffering, and lost wages.

LAW / ANALYSIS

Perkins brought this action against Defendant South Carolina Department of Transportation (“SCDOT”) on the grounds of negligence. The South Carolina Tort Claims Act (“the Act”) governs all tort claims against governmental entities and is the exclusive remedy for any tort committed by a governmental entity. The Act provides that the State, its agencies, political subdivisions, and other governmental entities are “liable for their torts in the same manner and to the same extent as a private individual under like circumstances,” subject to certain limitations and exemptions provided in the Act. S.C. Code Ann. § 15-78-40 (2005). Of particular importance to this case, S.C. Code Ann. § 15-78-60(15) (2005) expressly provides that:

...Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is ***not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice.***


S.C. Code Ann. § 15-78-60(15) (2005) (emphasis added). Accordingly, SCDOT may be held liable under a negligence theory for any loss arising out of a defect or condition in, on, or under any road or street, if it is determined that SCDOT had actual or constructive notice of the condition.

During the trial, testimony was provided by representatives of SCDOT that they are responsible for maintaining highways to provide for the safety of the traveling public. The testimony by both SCDOT employees, a design engineer and a resident maintenance engineer, acknowledged that this responsibility extends beyond the lanes of traffic and includes the entire right-of-way. One who controls the use of property has a duty of care not to harm others by its use. *Miller v. City of Camden*,

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329 S.C. 310, 314 (1997). This duty of care includes the duty to avoid damage or injury to foreseeable plaintiffs. See *Dorrell v. S.C. Dep't. of Transp.*, 361 S.C. 312, 15 (2004). Both employees also acknowledged that roadside safety is an integral component of maintaining a safe highway for the traveling public and that hazards within such roadside should be eliminated. The design engineer testified that although this center median was not intended to be a lane of travel, it is foreseeable that it will be used by the traveling public and others in a variety of occasions including emergency stops. This Court finds that it is reasonably foreseeable that the traveling public and other individuals may avail themselves of this lane, and accordingly, SCDOT has a duty to identify and eliminate hazards for those individuals that are foreseeably within such area. This finding is based on the evidence and the testimony provided by the SCDOT employees.

In regards to the specific hazard presented by the drainage culvert, both employees of SCDOT testified that it does not match the design indicated on the plans. Specifically, that the design plans provide for the concrete drainage basin and the concrete center median to be flush against each other. The employees also testified that the presence of a large gap between the concrete drainage basin and the concrete center median is a deviation from the design plans. Although testimony was proffered by the design engineer that reasonable tolerances and variations must be considered, no actual measure of those tolerances was provided. In reviewing the plans and the photographs submitted into evidence, it is apparent and evident that this particular gap is drastically wider than the analogous openings within the drainage grate itself. After examining the design plans, the photographs, and considering testimony, this Court finds that this gap presents a hazard to the traveling public, and accordingly SCDOT was negligent in failing to take corrective action to remedy this hazard. *Giannini v. S.C. Dep't of Transp.*, 378 S.C. 573, 580 (2008) (recognizing that SCDOT may be liable for a defective condition if there is a failure to take corrective action).

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Defendant SCDOT argued that Perkins was comparatively at-fault for this incident; however, the record is replete of any act by Perkins in which she failed to act as a reasonably prudent person in like or similar circumstances. This Court is not persuaded by the argument that Perkins should be at-fault simply because her vehicle stalled out in the far-left hand lane. Perkins testified that the tire and engine failure left her vehicle inoperable; therefore, she was unable to make any additional maneuvers with her vehicle. Recognizing the danger presented by her location in the middle of I-85, Perkins vacated her vehicle and proceeded to safety. The Defendant's own testimony by its employees affirms her decision to seek the safety of the opposing shoulder. Unfortunately, due to the hazard presented by the drainage culvert, Perkins was unable complete this course of action.

Lastly, in order to prevail, Perkins must show that SCDOT had actual or constructive notice of this hazard. Perkins introduced numerous records of actual drainage inspections performed by SCDOT. The resident maintenance engineer also offered testimony that this particular roadway is thoroughly and routinely inspected by his department. Additionally, Perkins introduced an internal engineering directive for the specific purpose of requiring road inspections for "detecting deficiencies that could pose a hazard to motorists or pedestrians, thus creating a risk for the Department." This directive specifically mandates that all roads including interstates and their drainage structures shall be inspected. In light of the evidence and testimony, this Court finds that SCDOT had or should have had notice of the hazard created by this defective drainage basin. This finding is analogous with *Wooten v. S.C. Dep't. of Transp.*, 333 S.C. 464, 511 S.E.2d 355 (1999) in which the court determined that once the DOT had notice of the hazardous condition, it may be liable for such hazard.

Perkins testified at trial that she has a complicated medical history including long-term, chronic low back pain, extensive pain management and a prior knee repair; however, Perkin's testimony and the report of the independent medical examiner are both consistent with the ultimate finding that

Perkins experienced significant right knee exacerbation and injury from the incident. Because there was no other testimony to contradict these findings, the Court accepts the facts as established from the testimony. Additionally, no testimony was offered to refute Perkin's claim for lost wages. Having found the testimony of Perkins to be credible and in placing great weigh on the report of the independent medical examiner, this Court finds that Perkins was significantly injured as a result of her fall and accordingly she is entitled to an award of damages for her medical expenses, pain, suffering, and lost wages.


CONCLUSION

Based on the foregoing analysis, this Court finds that the Defendant SCDOT owed a duty to Perkins, that SCDOT breached that duty, and that Perkins experienced damages as a proximate cause of said breach.

THEREFORE, this Court hereby finds for the Plaintiff as stated on the verdict that has been filed and orders that a judgment be entered in the amount of \$93,362.97 against the Defendant.

IT IS SO ORDERED.

April
~~March~~ 18, 2018
Spartanburg, South Carolina



Judge Grace Gilchrist Knie
Seventh Judicial Circuit

