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NOTES

The Assured Clear Distance Ahead Rule in Ohio

IN OHIO, when an automobile collides with an obstruction on the highway it becomes important to determine whether the driver was exceeding a speed which would have permitted him to stop within his assured clear distance ahead.[1] This issue must be determined since Section 4511 of the Ohio Revised Code (Ohio General Code Section 6307-21) provides:

> no person shall drive any motor vehicle upon any street or highway at a greater speed than will permit him to stop within the assured clear distance ahead.[2]

Prior to the passage of Section 6307-21, in order to avoid liability for negligence, a motorist who was involved in a collision was only required

[1] Erdman v. Mestrovich, 155 Ohio St. 85, 97 N.E.2d 674 (1951); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941); State v. Cheatwood, 84 Ohio App. 125, 82 N.E.2d 770 (1948). These courts have held that the assured clear distance ahead is measured by the shorter of the two following distances: (1) the distance between the operator's vehicle and the limit of his vision ahead, or (2) the distance between his vehicle and any intermediate discernible object which constitutes an obstruction in his path or lane of travel.

[2] OHIO REV. CODE § 4511.21 (OHIO GEN. CODE § 6307-21.) This statute not only sets out the assured clear distance ahead rule but also states the general speed limit in Ohio which is a speed that is reasonable and proper in view of the conditions prevalent upon the highway.

to prove that he had conformed to the standard of ordinary care.[3] The Ohio courts have held since the passage of the statute that it sets forth a legal standard of care in addition to the common law standard[4] and that a violation of the statute which proximately results in injury constitutes negligence per se.[5]

An analysis of the cases shows that the mere occurrence of a collision does not necessarily indicate a violation of the statute, but when the surrounding circumstances are taken into account a collision may constitute evidence of a violation.[6] Therefore, the issue of whether a collision proves that the driver violated the statute may present a question of fact for the jury. Where reasonable minds cannot differ on an issue of fact, however, the court must decide the issue as a matter of law.[7] In many cases, the manner in which the accident occurred has been held to be conclusive evidence that the driver violated the assured clear distance ahead rule, and in such cases negligence has been found as a matter of law.[8] Thus, whenever a driver has collided with a readily discernible object located ahead of him and within his lane of travel for a substantial period of time, he has been held, as a matter of law, to have been negligent.[9] Under such circumstances, the courts have indicated that the fact that a collision occurred furnishes evidence from which reasonable minds could only conclude that the driver was traveling at such a speed that he was unable to stop within the assured clear distance ahead.

While the majority of the reported cases involving the assured clear distance ahead rule have come within the above-mentioned situation, there

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[3] " each case must be considered in the light of its facts and circumstances, and the usual tests applied to determine whether there was a failure to exercise ordinary care in the operation of such motor vehicle." Tresise v. Ashdown, 118 Ohio St. 307, 313, 160 N.E. 898, 899 (1928)

[4] Skinner v. Pennsylvania R.R., 127 Ohio St. 69, 186 N.E. 722 (1933).

[5] Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941); Gumley, Adm'r v. Cowman, 129 Ohio St. 36, 193 N.E. 627 (1934); Skinner v. Pennsylvania R.R., 127 Ohio St. 69, 186 N.E. 722 (1933)

[6] McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941); Kormos v. Cleveland Retail Credit Men s Co., 131 Ohio St. 471, 3 N.E.2d 427 (1936); Gumley, Adm'r v. Cowman, 129 Ohio St. 69, 186 N.E. 722 (1933).

[7] Ziebro v. Cleveland, 157 Ohio St. 489, 106 N.E.2d 161 (1952); *cf.* Hamden Lodge v. Gas Co., 127 Ohio St. 469, 189 N.E. 246 (1934)

[8] *Accord,* McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952).

[9] Kormos v. Cleveland Retail Credit Men s Co., 131 Ohio St. 471, 3 N.E.2d 427 (1936); Higbee Co. v. Lindeman, 131 Ohio St. 479, 3 N.E.2d 426 (1936); Gumley, Adm r v. Cowman, 129 Ohio St. 36, 193 N.E. 627 (1934); Skinner v. Pennsylvania R.R., 127 Ohio St. 69, 186 N.E. 722 (1933); Kern v. Contract Cartage Co., 55 Ohio App. 481, 9 N.E.2d 869 (1936); Transp. Car Forwarding Co. v. Sladden, 49 Ohio App. 53, 195 N.E. 256 (1934); *accord,* McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952)

have been cases where the manner in which the collision occurred constituted evidence of a violation which presented a factual issue for the jury.

For example, in *Pressing v. Roadway Express, Inc.*[10] the defendant drove out of a gas station into the plaintiff's path on the highway. The plaintiff failed to stop and a collision occurred. Conflicting evidence was presented as to the distance between the plaintiff and the defendant when the defendant's vehicle first appeared in the road. The trial court directed a verdict for the defendant on the ground of contributory negligence per se, based on a violation of the assured clear distance ahead rule.

The court of appeals reversed the trial court and held that if the assured clear distance ahead is suddenly cut down without the driver's fault there is no violation of the statute unless in the exercise of ordinary care the driver could have stopped and avoided the collision;[11] and, since reasonable minds could have differed whether the plaintiff could have stopped in the exercise of ordinary care, the question of whether he violated the assured clear distance ahead rule should have been left to the jury.[12]

Under some circumstances, a collision on the highway does not involve the assured clear distance ahead rule. Thus, it has been held that the rule has no application when all that is shown is a collision between motor vehicles which converged at a crossroad.[13] The crossroads collision is an instance of an object's entering the driver's path at a distance so much shorter than his assured clear distance ahead[14] that regardless of whether the driver violated the assured clear distance ahead rule, he could not have stopped in time to avoid the collision. Therefore, the issue whether the driver was negligent cannot be decided on the basis of the assured clear distance ahead rule.[15]

Since in every collision, even though it be the moment before impact, the driver is at some time exceeding a speed that will permit him to stop

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[10] 69 Ohio App. 1, 42 N.E.2d 720 (1942).

[11] Erdman v. Mestrovich, 155 Ohio St. 85, 97 N.E.2d 674 (1951); *accord,* McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952); Kelver v. Express Co., 151 Ohio St. 467, 86 N.E.2d 608 (1949); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941)

[12] *Accord,* Hamden Lodge v. Gas Co., 127 Ohio St. 469, 189 N.E. 246 (1934); Thomin v. Norwood S.&D. Mfg. Co., 74 Ohio App. 505, 59 N.E.2d 605 (1944).

[13] Sherer v. Smith, 155 Ohio St. 567, 99 N.E.2d 763 (1951); Blackford v. Kaplan, 135 Ohio St. 268, 20 N.E.2d 522 (1939); Wade, Adm'x v. Schneider, 63 Ohio App. 24, 25 N.E.2d 290 (1939).

[14] The courts have stated that the assured clear distance ahead is limited to the driver's lane of travel. McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952); Erdman v. Mestrovich, 155 Ohio St. 85, 97 N.E.2d 674 (1951). Therefore, in a collision at a crossroad the assured clear distance ahead for both parties normally extends beyond the point where the collision occurs.

[15] When a collision occurs with an object which enters the driver s path at a distance ahead shorter than the assured clear distance ahead, the driver does not violate the

within the assured clear distance ahead, a literal application of the statute would require a holding that every motorist who collided with an obstruction on the highway is negligent. Obviously the legislature never intended to create such a harsh rule. Apparently recognizing this fact, the Ohio courts have made several attempts to construe the assured clear distance ahead rule so as to set forth a reasonable test to determine when a party to a collision is negligent per se.[16]

Although earlier cases had stated that there might be situations in which a driver who collided with an obstruction on the highway did not violate the assured clear distance ahead rule,[17] *Kormos v. Cleveland Retail Credit Men's Co.*[18] was the first supreme court case to make an affirmative statement indicating what those situations might be. By way of dictum the Supreme Court of Ohio stated in the *Kormos* case:

> An operator who has failed to comply with the "assured clear distance statute" may excuse such failure and avoid the legal imputation of negligence per se by establishing that, without his fault, and because of circumstances over which he had no control, compliance with the law was rendered impossible.[19]

The view expressed in the *Kormos* case was applied shortly thereafter in *Matz v. Curtis Cartage Co.*[20] and *Hangen v. Hadfield.*[21] In each of these cases, the collision was caused by an oncoming automobile within the plaintiff's lane of travel. The holdings were that a motorist suddenly faced with an oncoming automobile wrongfully within his lane of travel a short distance ahead is confronted with such an emergency as to "excuse"[22] his failure to comply with the assured clear distance ahead rule.

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assured clear distance ahead rule unless in the exercise of ordinary care he could have stopped and avoided the collision. McFadden v. Transp. Co., 156 Ohio St. 430, 103 N.E.2d 385 (1952); Bickel v. American Can Co., 154 Ohio St. 380, 96 N.E.2d 4 (1950); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941) In the crossroad cases the entrance of the object with which collision occurs is almost instantaneous with the collision so that even if the driver were exercising ordinary care he could not stop and avoid the collision. But query: If a driver at a substantial distance away from a crossroad becomes aware that another vehicle is certain to enter his path, should he not, in the exercise of ordinary care, be able to stop regardless of how short a distance ahead such vehicle first enters his path? This question has apparently never been raised so the point is moot.

[16] Bickel v. American Can Co., 154 Ohio St. 380, 96 N.E.2d 4 (1950); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941), Gumley, Adm'r v. Cowman, 129 Ohio St. 36, 193 N.E. 627 (1934); *see* McFadden v. Elmer C. Breuer Transp. Co., 98 N.E.2d 339, 345 (Ohio App. 1951) (dissenting opinion).

[17] *See* Gumley, Adm r v. Cowman, 129 Ohio St. 36, 39, 193 N.E. 627, 629 (1934)

[18] 131 Ohio St. 471, 3 N.E.2d 427 (1936)

[19] *Id.* at 472, 3 N.E.2d at 427

[20] 132 Ohio St. 271, 7 N.E.2d 220 (1937).

[21] 135 Ohio St. 281, 20 N.E.2d 715 (1939)

[22] Although the Ohio courts have discussed the possibility of a "legal excuse" for neg-

In *Smiley v. Spring Bed Co.*[23] the defendant's truck was parked without lights on the right side of the highway just beyond the summit of a hill. The plaintiff's automobile came over the top of the hill where the plaintiff was momentarily blinded by the headlights of an oncoming automobile and collided with the defendant's truck. The jury found for the plaintiff and the court rendered judgment accordingly.

The Ohio Supreme Court reversed the judgment and held that the plaintiff was contributorily negligent as a matter of law. The fact that the plaintiff was blinded by oncoming headlights did not "excuse"[24] his violation of the statute.[25] The court stated that if a motorist's view "is cut off by darkness, by a curve in the highway, or by the crest of a hill, the distance between him and the point where his vision ends is the assured clear distance ahead."[26] Therefore, the fact that the plaintiff did not see the defendant's truck until he came over the top of the hill was no defense on the issue of whether the plaintiff had violated the assured clear distance ahead rule.[27] The court further stated by way of dictum:

> the driver of a motor vehicle must not operate it at a greater speed than will permit him to bring it to a stop within the distance between his motor vehicle and a discernible object obstructing his path or line of travel, unless such assured clear distance ahead is suddenly cut down or lessened without his fault, by the entrance within such assured clear distance ahead and into his path or line of travel of some obstruction which renders him unable, in the exercise of ordinary care, to avoid colliding therewith.[28]

Although the *Smiley* and *Kormos* cases together laid down a fairly definite test to determine whether there was a violation of the assured clear distance ahead rule, the supreme court left unanswered the question of whether the party alleging a violation satisfied his burden of proof merely by showing that a collision had occurred. The *Smiley* test was

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ligence even though the assured clear distance ahead rule was violated, the facts which give rise to the "legal excuse" recognized by these cases actually tend to prove that there was no violation of the assured clear distance ahead rule and not merely that there was an excuse for violating the rule. *E.g.*, Bickel v. American Can Co., 154 Ohio St. 380, 96 N.E.2d 4 (1950); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941); Hangen v. Hadfield, 135 Ohio St. 281, 20 N.E.2d 715 (1939); Matz v. Curtis Cartage Co., 132 Ohio St. 271, 7 N.E.2d 220 (1937); Kormos v. Cleveland Retail Credit Men's Co., 131 Ohio St. 471, 3 N.E.2d 427 (1936).

[23] 138 Ohio St. 81, 33 N.E.2d 3 (1941).

[24] See note 23 *supra.*

[25] *But cf.* Curtis v. Hubbel, 42 Ohio App. 520, 182 N.E. 589 (1932) (motorist was held to have acted reasonably and not to have violated the assured clear distance ahead rule where he attempted to stop immediately on being blinded by oncoming headlights). See Note, 133 A.L.R. 967 (1941).

[26] Smiley v. Spring Bed Co., 138 Ohio St. 81, 84, 33 N.E.2d 3, 5 (1941)

[27] See Note, 133 A.L.R. 967 (1941).

[28] Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941).

applied in subsequent cases,[29] but it was not until *McFadden v. Transportation Co.*[30] that the Ohio Supreme Court established that the mere fact that a collision has occurred does not make out a prima facie case of negligence per se.

The *McFadden* case involved a collision with a roll of steel, 34 inches in height and 47 inches in diameter. The defendant admitted that its negligence was the proximate cause of the steel's falling from one of its trucks and based its defense solely on an alleged violation of the assured clear distance ahead rule by the plaintiff's decedent who was killed in the collision. There was no evidence as to when the steel coil rolled into the path of the deceased, and there was conflicting evidence as to the distance ahead at which the steel roll first became discernible to the plaintiff's decedent. The trial court, sitting as the trier of fact, rendered a verdict and judgment for the plaintiff.

The Supreme Court of Ohio affirmed the trial court and said that in order to prevail the party alleging a violation of the assured clear distance ahead rule must show that the party charged with negligence:

> [collided] with a reasonably discernible object (1) which was located ahead of him in his lane of travel and which object was (a) static or stationary, or (b) moving ahead of him in the same direction or (2) which appeared in his path at a sufficient distance ahead of him to give time, in the exercise of ordinary care, to bring his automobile to a stop and avoid a collision.[31]

The defendant in the *McFadden* case failed to establish that the steel roll appeared in the deceased's path at a sufficient distance ahead to enable him to stop in time to avoid a collision and, therefore, did not sustain the required burden of proof. The court further stated that a finding that the steel roll was not "reasonably discernible" would have been warranted by the evidence.

Although the Ohio Supreme Court has consistently implied that there can be no violation of the assured clear distance ahead rule unless the object with which the collision occurred was reasonably discernible,[32] the *McFadden* case is the only decision besides that of *Kormos v. Cleveland Retail Credit Men's Co.*[33] in which the issue of discernibility was expressly

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[29] Sherer v. Smith, 155 Ohio St. 81, 99 N.E.2d 674 (1951); Erdman v. Mestrovich, 155 Ohio St. 85, 97 N.E.2d 674 (1951); Bickel v. American Can Co., 154 Ohio St. 379, 96 N.E.2d 4 (1950); Klever v. Express Co., 151 Ohio St. 467, 86 N.E.2d 608 (1949); State v. Cheatwood, 84 Ohio App. 125, 82 N.E.2d 770 (1948); Walcott v. Fuller, 83 Ohio App. 176, 81 N.E.2d 126 (1948); Pressing v. Roadway Express, Inc., 69 Ohio App. 1, 42 N.E.2d 720 (1942)

[30] 156 Ohio St. 430, 103 N.E.2d 385 (1952)

[31] *Id.* at 434, 103 N.E.2d at 387

[32] *Accord,* Erdman v. Mestrovich, 155 Ohio St. 85, 97 N.E.2d 674 (1951); Smiley v. Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3 (1941); Gumley, Adm r v. Cowman, 129 Ohio St. 36, 193 N.E. 627 (1934)

discussed by the court. In the *Kormos* case the plaintiff's automobile struck the defendant's unlighted automobile parked on the highway at the foot of a hill. In an effort to show that he did not violate the assured clear distance ahead rule, the plaintiff contended that since the defendant's vehicle was spattered with mud it was not discernible and that he was unable to see it until a moment before impact.

The supreme court held that the defendant's automobile was a discernible object and that the plaintiff was contributorily negligent as a matter of law. The court reasoned that an Ohio statute required an automobile to be equipped with headlights which would reveal any substantial object for a distance of 200 feet[34] and since the automobile with which the plaintiff collided was a substantial object it should have been discernible to him at a distance of 200 feet, whether it was "mud-spattered or otherwise." The implication of the holding is that so long as an object is substantial, it is discernible for purposes of the assured clear distance ahead rule.[35]

The reasoning in the *Kormos* and *McFadden* cases does not seem to be in accord.[36] The court in the *McFadden* case took the view that under certain circumstances an object as large as a roll of steel may not be reasonably discernible.[37] Certainly a roll of steel constitutes a "substantial" object, so that under the reasoning in the *Kormos* case it would be a discernible object.

The determination of discernibility in *McFadden v. Transportation Co.* is based on a more realistic approach than that of the *Kormos* case.[38]

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[33] 131 Ohio St. 471, 3 N.E.2d 427 (1936).

[34] OHIO GEN. CODE § 6310-1; repealed, 119 Ohio Laws 766 (1941).

[35] *See* Kormos v. Cleveland Retail Credit Men's Co., 131 Ohio St. 471, 478 3 N.E.2d 427, 430 (1936) (dissenting opinion).

[36] Although the two cases might be distinguishable on the ground that Ohio General Code Section 6310-1 was repealed prior to the *McFadden* case, Ohio Revised Code Section 4513-15 (Ohio General Code Section 6307-88) is substantially the same as Section 6310-1 and was applicable in the *McFadden* case so that the reasoning in the *Kormos* case was applicable.

[37] The court in the *McFadden* case cited with approval Blowers v. Cedar Falls & Northern R.R., 233 Iowa 258, 8 N.W.2d 751 (1942) (held, snowplow covered with snow not discernible as it blended with landscape). *See* Kormos v. Cleveland Retail Credit Men's Co., 131 Ohio St. 471, 478, 3 N.E.2d 427, 430 (1936) (dissenting opinion).

[38] Colonial Trust Co. v. Elmer C. Breuer, Inc., 363 Pa. 101, 69 A.2d 126 (1949). Construing Ohio law, the Pennsylvania court stated: "Assured means what appears to a reasonably prudent driver, exercising due care, to be the clear distance ahead." *See* Kormos v. Cleveland Retail Credit Men's Co., 131 Ohio St. 471, 478, 3 N.E.2d 427, 430 (1936) (dissenting opinion) "To hold a motor vehicle discernible under any and all circumstances, within the radius of the rays of the headlights, is to disregard natural conditions."