

SUPREME COURT OF LOUISIANA

No. 98-C-2378

PATRICIA DESHOTEL CORMIER ET AL

Versus

MICKEY L. COMEAUX ET AL

Consolidated with

MICKEY LOUIS COMEAUX ET AL

Versus

STATE OF LOUISIANA, THROUGH THE DOTD

LEMMON, J., Concurring

The purpose of regulating fore slopes of roadside ditches is to improve the chances of recovery by a motorist who leaves the highway for any reason and attempts to steer back onto the road or otherwise maintain control of the vehicle off the road. Although the driver in the present case may have left the highway at a sharp angle, he traveled seventy-four feet before striking the back slope, and the fore slope of the ditch could be relevant to his ability to control the vehicle during this brief time interval. I therefore would not limit our focus to the back slope of the ditch, especially since the trial judge found both the fore slope and back slope were dangerous.

The overall slope of the ditch at the relevant location is shown on the attached exhibit from the record. After the three-foot shoulder (which is seventeen feet from the beginning of the back slope), the slope of the first five-foot section of the ditch is almost 4:1, while the slope of the second five-foot section is 2.4:1. Because there was no extremely abrupt plunge in the first ten feet of the fore slope, there was no manifest error in the trial judge's conclusion that the fore slope, while below (arguably

inapplicable) standards, was not unreasonably dangerous.¹

This case may be distinguished from Aucoin v. State of Louisiana Through Dep't of Transp. and Dev., 97-1938 (La. 4/24/98), 97-1967 (La. 4/24/98), 712 So. 2d 62.

The most significant distinction is that the 1988 overlay project in the Aucoin case required grading of the drainage ditch, next to a one-foot shoulder, to achieve a slope of at least 3:1, and the fore slope of the ditch at the point of impact was more than twice as steep. The DOTD's construction and maintenance failure regarding the ditch, combined with the extremely narrow shoulder, made the roadside unreasonably dangerous in terms of recoverability, as found by the trial judge in that case.

¹I disagree with the majority characterization of the determination of whether a road condition is unreasonably dangerous as a question of fact. Generally such a determination is a mixed question of law and fact.