

DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent.

With respect to the proper location of a median barrier, the Circuit Court of the First Circuit (Circuit Court) found that "[s]topping sight distance is the dispositive issue." Citing the testimony of Richard Ryan (Ryan), the State's expert, and a table of stopping sight distances from the State Department of Transportation's design manual, the Circuit Court found:

66. Stopping sight distance for 45 mph design speed is 375 feet (Hawaii Manual Table 4-1 at p. 4-2; Ryan Trial Transcript at 235) and is the likely distance a median barrier would have ended east of the left-turn pocket based upon reasonable and prudent engineering standards.<sup>[1/]</sup>

The Circuit Court therefore found that the "proper installation of a median barrier (with or without cushion) would have terminated 375 feet east of the left-turn pocket and would not have prevented this cross-over accident[,]" in which the Williams' vehicle crossed-over the median between 333 and 357 feet east of the left-turn pocket. Based on these findings, the Circuit Court concluded that "the State's negligent failure to have installed a median barrier in the vicinity of the accident" was not a substantial factor in causing the cross-over accident "[b]ecause a properly designed, constructed[,], and maintained median barrier would not have extended to the location where the Williams' vehicle crossed the median."

Assuming that stopping sight distance is the appropriate standard ("the dispositive issue" according to the Circuit Court), I believe that the Circuit Court clearly erred in its application of that standard to find that a properly installed median barrier would have ended 375 feet east of the left-turn pocket. The Circuit Court's finding was based on Ryan's expert testimony. Ryan opined that a properly installed median barrier would have ended 375 feet east of the left-turn

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<sup>1/</sup> The Circuit Court's reference to the "Hawaii Manual" is to the October 1980 "Uniform Design Manual for Streets and Highways" of the State of Hawaii, Department of Transportation, and I will use the same abbreviation.

pocket. He based his opinion on stopping sight distance, which he explained was the distance that "permits a person looking at something to perceive, react, and stop a vehicle." Ryan obtained the figure of 375 feet from a table for stopping sight distance using the speed of 45 miles per hour, which was the applicable speed limit in the vicinity of the accident.<sup>2/</sup>

However, as Plaintiffs-Appellants argue, the fact that the stopping sight distance for the speed of 45 miles per hour is 375 feet does not mean that the median barrier must terminate 375 feet from the left-turn pocket. This is because, as a matter of geometry, the median barrier (installed in the middle of the 24-foot median strip) could extend closer to the left-turn pocket without obstructing the line of sight between the westbound driver and the eastbound driver turning left from the left-turn pocket. In other words, the 375-foot stopping sight distance could still be maintained (with both drivers having an unobstructed view of each other) even if the median barrier was extended closer to the left-turn pocket than 375 feet.

This was demonstrated during Ryan's cross-examination, when he was asked to draw on Plaintiffs' Exhibit 222 (a to-scale engineering drawing of the accident scene) a line of sight between a westbound vehicle 375 feet away from the left-turn pocket and a vehicle in the left-turn pocket. The line of sight drawn by Ryan on Exhibit 222 crossed the center of the median strip (1) at a point much closer than 375 feet from the left-turn pocket and (2) at a point closer to the left-turn pocket than the Williams' vehicle had crossed over the median strip during the accident. If a median barrier had been built to this point, it would have extended beyond the location where the Williams' vehicle crossed the median.

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<sup>2/</sup> Ryan actually testified that the figure he obtained was "376" feet for stopping sight distance at 45 miles per hour from a federal design manual, which was one foot different than the 375 feet derived from Table 4-1 in the Hawaii Manual. The parties used the figures 375 feet and 376 feet interchangeably, and for simplicity, I will use 375 feet.

For these reasons, I believe that the Circuit Court's finding that the "proper installation of a median barrier . . . would have terminated 375 feet east of the left-turn pocket" was clearly erroneous. The Circuit Court's finding was based on Ryan's expert opinion testimony. However, Plaintiffs-Appellants demonstrated that Ryan's expert opinion testimony was defective because Ryan erroneously justified his location of the median barrier based upon a 375-foot stopping sight distance. Because the Circuit Court's conclusion that the State's negligent failure to install a median barrier was not a substantial factor in causing the cross-over accident was based on its clearly erroneous finding that a properly installed median barrier would have terminated 375 feet east of the left-turn pocket, the Circuit Court's conclusion cannot stand. Accordingly, I would vacate the Circuit Court's Final Judgment and remand the case for further proceedings.

*Craig H. Nakamura*