

Court of Claims of Ohio

The Ohio Judicial Center
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JONI MARTIN

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2012-06076

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} This case arises as a result of a motorcycle accident that occurred on May 26, 2012, in Kingston Township, Delaware County, Ohio. On that date, plaintiff was operating a 1995 Yamaha motorcycle and traveling with a group of approximately 15 to 20 motorcyclists who were participating in a Memorial Day ride. After riding northbound on State Route (SR) 61, the group turned left at the intersection with SR 521 and proceeded westbound. Plaintiff, who had been second in line as the group traveled on SR 61, remained in the intersection until the other motorcycles passed through.

{¶3} Lieutenant Kevin Knapp, commander of the Delaware post of the Ohio State Highway Patrol (OSHP), had been traveling behind the motorcycle group on SR 61 and determined that plaintiff had improperly blocked the SR 61/SR 521 intersection. Lt. Knapp followed plaintiff through the intersection, intending to issue her a traffic citation. After plaintiff completed the turn, she heard Lt. Knapp's patrol vehicle approaching quickly from behind. Plaintiff steered her motorcycle to the right side of the roadway,

away from the approaching vehicle. Soon thereafter, Lt. Knapp activated an auxiliary horn which frightened plaintiff. Plaintiff lost control of her motorcycle as the front wheel left the roadway and came in contact with loose gravel on the berm of the road. Plaintiff's motorcycle traveled into a ditch alongside the roadway and overturned, causing plaintiff to sustain injuries.

{¶4} Plaintiff alleges that Lt. Knapp acted negligently by driving unreasonably close to her motorcycle and sounding the patrol vehicle's horn in such close proximity to her that she experienced an "auditory reflex" which caused her to lose control of the motorcycle.

PUBLIC DUTY

{¶5} Pursuant to R.C. 2743.02(A)(3)(a), the state is generally immune from liability regarding the performance or non-performance of a public duty, which includes "any statutory, regulatory, or assumed duty concerning any action or omission of the state involving * * * *law enforcement*." R.C. 2743.01(E)(1)(a).¹ R.C. 2743.02(A)(3)(a) represents an exception to the state's waiver of sovereign immunity, as set forth in R.C. 2743.02(A)(1).

{¶6} Immunity under R.C. 2743.02(A)(3)(a) "does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party." R.C. 2743.02(A)(3)(b).

¹The court notes that defendant's answer lists immunity as a defense; however, the issue of whether Lt. Knapp was performing a public duty pursuant to R.C. 2743.02(A)(3) was not addressed by the parties. Nevertheless, Ohio courts have held that "the public duty rule is not in the nature of an affirmative defense, but rather, when applicable, represents a deficiency in a negligence claim which may procedurally be advanced by a general denial." *Jarvi v. Conneaut*, 11th Dist. No. 92-A-1710 (Mar. 19, 1993), (applying the former common law public duty rule pursuant to *Sawicki v. Ottawa Hills*, 37 Ohio St.3d 222 (1988)).

{¶7} Under R.C. 2743.02(A)(3)(b), the state can be held liable for its performance or non-performance of a public duty, which is otherwise exempted from the state's waiver of sovereign immunity, when it stands in a special relationship with the injured party. *Burr v. Ohio State Hwy. Patrol*, 10th Dist. No. 12AP-26, 2012-Ohio-4906, ¶ 20.

{¶8} R.C. 2743.02(A)(3)(b) defines a "special relationship" as requiring the following elements:

{¶9} An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

{¶10} Knowledge on the part of the state's agents that inaction of the state could lead to harm;

{¶11} Some form of direct contact between the state's agents and the injured party;

{¶12} The injured party's justifiable reliance on the state's affirmative undertaking.

{¶13} There is no doubt that Lt. Knapp was engaged in law enforcement activities, which constitutes a public duty. The court finds that there was no special relationship between Lt. Knapp and plaintiff inasmuch as plaintiff did not rely on any affirmative undertaking by Lt. Knapp.

NEGLIGENCE

{¶14} Even if the court assumed the existence of a special relationship between OSHP and plaintiff based upon Lt. Knapp's attempt to stop plaintiff and issue her a citation, in order for plaintiff to prevail upon her claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81,

2003-Ohio-2573, citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77(1984). Generally, OSHP owes a duty of ordinary care to drivers encountered within the scope of OSHP's official duties. *Burr, supra*, ¶ 24, citing *Legg v. Ohio State Hwy. Patrol*, 66 Ohio Misc.2d 118, 122 (Ct. of Cl.1993). "An officer has no duty to prevent that which he could not reasonably foresee." *Id.* at ¶ 24.

{¶15} Plaintiff testified that on the day in question she was acting as a safety officer for the Satin and Steel motorcycle club, an association of women riders who organized service events, such as the Memorial Day ride. The riders met at a bar and then proceeded to the town of Sunbury, where they stopped in a church parking lot. Plaintiff testified that she was second in line when the group exited the parking lot. According to plaintiff, she had earlier discussed riding with Pamela Schenk, who was positioned at the end of the group in the "tail-gunner" position. Plaintiff explained that she did not want to pull over on the side of the road, and instead decided to wait at the intersection of SR 61 and SR 521. Plaintiff identified photographs that were taken in July 2012, which depict the intersection and the surrounding area. (Plaintiff's Exhibits 11A-N.) Plaintiff testified that she did not come to a complete stop in the intersection, but traveled at a slow rate of speed with her feet contacting the roadway in a "shuffling" manner. Pamela Schenk motioned for plaintiff to join the group, with the intention that Pamela would maintain the tail-gunner position.

{¶16} After she completed her turn, plaintiff heard the sound of an accelerating engine and she observed a white car in her rear-view mirror; however, plaintiff stated that she did not know at the time that the vehicle was a patrol car. Plaintiff testified that the car approached to within one to two feet of her motorcycle, so close that she could not see either the driver or any feature of the vehicle that identified it as a patrol vehicle. Plaintiff stated that she turned to look at the car and then maneuvered away from the car and toward the right side of the road. According to plaintiff, she heard a

loud horn that “scared the daylight out of [her]” and caused her to lose control of her motorcycle.

{¶17} During cross examination, plaintiff testified that she saw cars waiting to come through the intersection while she was waiting for the motorcycle group to pass through and that she first saw the patrol car when it came through the intersection. Plaintiff maintained that the lights on the patrol car were not activated and that she did not know the car was a patrol vehicle until after the accident.

{¶18} Plaintiff called several witness who had participated in the Memorial Day ride. Pamela Schenk recalled that her motorcycle was the last motorcycle in the group when it reached the intersection. Schenk testified that when she traveled through the intersection she saw the patrol car behind her and she was riding just ahead of plaintiff.

According to Schenk, the lights on the patrol car were activated before the horn sounded. Kathy Hall testified that she was riding ahead of Schenk when she rode up and told her that plaintiff was involved in an accident. Hall returned to a parking lot near the intersection where Lt. Knapp addressed about 15 to 20 members of the motorcycle group. According to Hall, Lt. Knapp talked about the accident and stated that it was “his fault” and when Hall asked why the lights were not on the patrol car he yelled for her to “stand down.” Hall conceded that she did not see the accident and that she did not hear the patrol car horn.

{¶19} William Hall testified that he returned to the intersection after he heard there had been an accident. Hall related that Lt. Knapp informed the group that it was illegal to block the intersection and that he pulled his wife back after Lt. Knapp told her to stand down. Sally Rose testified that she also returned to the intersection after learning of the accident. Rose recalled Lt. Knapp telling someone to stand down and stating that he had caused the accident. Crystal Queen testified that Lt. Knapp told Hall to “stand down” after he was asked why he did not turn on the patrol car siren, at which time Queen walked away.

{¶20} Plaintiff also presented the testimony of Daniel Grein, a law enforcement officer who is an expert on accident reconstruction. Grein visited the site of the accident and reviewed documents including the traffic crash report and photographs of the area at issue. Based upon his review, Grein opined that plaintiff's estimate that she was traveling at ten miles per hour when she left the roadway was most likely correct and that it would have been difficult for her to steer back onto the road after the tires on her motorcycle contacted the gravel on the berm. According to Grein, plaintiff experienced a reflex reaction when the sound of the horn on the patrol car startled her.

{¶21} During cross examination, Grein testified that he did not inspect the patrol car and that he was not aware of either the particular siren or horn on the car, or the decibel levels those devices produced. Based upon his review of the evidence presented to him, Grein testified that he did not believe that Lt. Knapp violated any procedures while initiating the traffic stop. Furthermore, Grein testified that he had no criticism of Lt. Knapp's decision to activate the horn to get plaintiff's attention during his attempt to get her to stop.

{¶22} Lt. Knapp testified that he was near the intersection of SR 36 and SR 61 when he first encountered the motorcycle group. Lt. Knapp recalled that one rider stopped in that intersection, blocking SR 36 while the other riders turned onto SR 61. Lt. Knapp testified that he activated the air horn to provide a "friendly warning" that stopping in the intersection was not lawful. Lt. Knapp next observed the motorcycle group as they approached the SR 61/SR 521 intersection. Lt. Knapp testified that he stopped at the intersection while he watched plaintiff "clear" the intersection by waiting as the other motorcycle riders completed the turn. Lt. Knapp related that he activated his overhead lights while he was parked on northbound SR 61 and that he intended to direct plaintiff to the adjacent parking lot after she had noticed the patrol car. Lt. Knapp testified that he followed plaintiff onto westbound SR 521 and activated his air horn with a "quick burst" when he was approximately one car length behind plaintiff's motorcycle,

whereupon he saw the motorcycle “jerk” to the right and travel into the ditch alongside the roadway.

{¶23} Lt. Knapp called for medical assistance. Lt. Knapp testified that after the squad arrived, he talked with the members of the group who had returned to the scene of the accident at which time he addressed questions and discussed traffic laws. Lt. Knapp recalled that one member of the group became agitated and hostile and that he responded by asking that person to calm down. Lt. Knapp testified that he did not recall telling the group that he believed he had caused the accident.

{¶24} Lt. Knapp explained that overhead lights are used in almost every traffic stop and that it was common practice for OSHP officers both to use the air horn and to follow close behind motorists when making a stop. According to Lt. Knapp, he was surprised by plaintiff’s reaction inasmuch as he has used the air horn during many traffic stops without ever seeing a motorist become startled and lose control of her vehicle.

{¶25} The court finds that Lt. Knapp’s testimony regarding his procedures for conducting a traffic stop and his conduct both in evaluating plaintiff’s actions and executing the traffic stop was credible and persuasive. Specifically, the court finds that Lt. Knapp activated the overhead lights on the patrol car while it was parked near the intersection and then he pursued plaintiff in a reasonable manner as she rode away from the intersection. Furthermore, the court finds that Lt. Knapp’s use of the air horn was reasonable and that it was not foreseeable that such use would cause plaintiff to lose control of her motorcycle. Although plaintiff contends that the sound restrictions referenced in R.C. 4513.21 suggest that the air horn on the patrol car emitted an unreasonably loud sound for use near a motorcycle, the statute merely sets minimum sounds levels for horns and sirens. The sound requirements referenced in R.C. 4513.21 do not support plaintiff’s argument that Lt. Knapp’s use of the air horn was unreasonable. Plaintiff’s own expert, who is an experienced law enforcement

officer, testified that it was not improper for Lt. Knapp to use the air horn to get plaintiff's attention. Indeed, Grein conceded both that plaintiff committed a traffic violation by waiting in the SR 61/SR 521 intersection and that Lt. Knapp did not violate any procedure while initiating the traffic stop. In short, the court finds that plaintiff failed to prove that Lt. Knapp committed a breach of any duty owed to her and that plaintiff's conduct in steering toward the edge of the roadway was the sole proximate cause of the accident.

{¶26} For the foregoing reasons, the court finds that plaintiff has failed to prove her negligence claim by a preponderance of the evidence. Therefore, judgment is recommended in favor of defendant.

{¶27} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

ANDERSON M. RENICK
Magistrate

cc:

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James P. Dinsmore
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Case No. 2012-06076

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DECISION

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