

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JONI MARTIN

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2012-06076

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

JUDGMENT ENTRY

{¶1} On February 14, 2014, the magistrate issued a decision recommending judgment for defendant.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On February 27, 2014, plaintiff filed objections to the magistrate’s decision. Defendant filed a response on March 11, 2014.

{¶3} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated for trial. Following a trial on the issue of liability, the magistrate recommended judgment in favor of defendant.

{¶4} According to the magistrate’s decision, this case arises as a result of a motorcycle accident that occurred on May 26, 2012, in Kingston Township, Delaware County, Ohio. Plaintiff was operating a motorcycle and traveling northbound on State Route (SR) 61 with a group of motorcyclists. As the group turned onto SR 521, plaintiff remained in the intersection until the other motorcycles passed through. Lieutenant Kevin Knapp, commander of the Delaware post of the Ohio State Highway Patrol,

determined that plaintiff had improperly blocked the intersection and followed plaintiff through the intersection intending to issue a citation. Plaintiff heard Lt. Knapp's patrol vehicle quickly approaching from behind and steered her motorcycle to the right side of the road. Lt. Knapp activated his air horn when he was approximately one car length behind plaintiff's motorcycle. Plaintiff lost control of her motorcycle and crashed into a ditch alongside the roadway, sustaining injuries.

{¶5} The magistrate determined that pursuant to R.C. 2743.02(A)(3)(a) the state is "immune from liability regarding the performance or non-performance of a public duty," which includes any duty involving law enforcement. Magistrate's decision, pg. 2.

The magistrate found that "Lt. Knapp was engaged in law enforcement activities, which constitutes a public duty" and "that there was no special relationship between Lt. Knapp and plaintiff inasmuch as plaintiff did not rely on any affirmative undertaking by Lt. Knapp." *Id.* at 3. The magistrate further determined that even assuming the existence of a special relationship, (1) Lt. Knapp "pursued plaintiff in a reasonable manner"; (2) the "use of the air horn was reasonable"; and (3) "it was not foreseeable that such use would cause plaintiff to lose control of her motorcycle." *Id.* at 6. Thus, the magistrate concluded that "plaintiff failed to prove that Lt. Knapp committed a breach of any duty owed to her." *Id.* at 7.

{¶6} Plaintiff has interposed five objections to the magistrate's decision. Specifically, plaintiff objects to the magistrate's findings that (1) "Lt. Knapp's procedure for conducting the traffic stop of plaintiff was reasonable and persuasive"; (2) "Lt. Knapp's use of the emergency air horn was reasonable"; (3) "Lt. Knapp pursued plaintiff in a reasonable manner"; (4) "[i]t was not foreseeable to Lt. Knapp that the use of the horn (one car length away or three feet away) would cause plaintiff to lose control"; and (5) "[t]he emergency horn was not unreasonably loud for use near a motorcycle." Plaintiff's objections, pg. 1.

{¶7} Civ.R. 53(D)(3)(b)(iii) states that "[a]n objection to a factual finding, whether

or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” To the extent that plaintiff has challenged the magistrate’s factual findings, plaintiff has failed to support her objections with a transcript of the evidence. Accordingly, plaintiff’s objections to such findings are without merit and are OVERRULED.

{¶8} Regarding the magistrate’s application of the public duty rule contained in R.C. 2743.02(A)(3)(a), the court notes that plaintiff did not object to the magistrate’s application of public duty immunity in this case. Regardless of whether the public duty rule applies to the facts of this case, the magistrate’s application of ordinary negligence principles to the facts of this case is appropriate and dispositive.

{¶9} Based upon the magistrate’s decision and the objections, the court cannot conclude that the use of an air horn in a traffic stop is unreasonable or that it was foreseeable that such use would cause plaintiff to lose control of her motorcycle. Furthermore, the court cannot conclude that Lt. Knapp pursued plaintiff in an unreasonable manner; that the procedure for conducting a traffic stop was unreasonable; or that the air horn was unreasonably loud. As noted by the magistrate, plaintiff’s expert accident reconstructionist, Daniel Grein, did not believe that Lt. Knapp violated any procedures while initiating the traffic stop and did not criticize Lt. Knapp’s use of an air horn. Accordingly, the magistrate correctly concluded that plaintiff failed to prove that Lt. Knapp committed a breach of any duty owed to her.

{¶10} Upon review of the record, the magistrate’s decision and plaintiff’s objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law in finding that Lt. Knapp was not negligent in conducting the traffic stop. Therefore, the objections are OVERRULED and the court adopts the magistrate’s decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of

defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

David E. Koerner
Ralph C. Buss
168 East High Street
P.O. Box 705
Painesville, Ohio 44077-0705

James P. Dinsmore
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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