[Cite as *Laing v. Wright State Univ.*, 2022-Ohio-3382.]

JOHN LAING Plaintiff v. WRIGHT STATE UNIVERSITY Defendant	Case No. 2021-00597JD Magistrate Scott Sheets DECISION OF THE MAGISTRATE

{¶1} Plaintiff's complaint asserts a negligence claim based on an October 30, 2019 motor vehicle accident involving a vehicle operated by Sid Van Druenen ("Van Druenen") who, at the time, defendant employed as an assistant soccer coach. On July 13, 2022 and pursuant to R.C. 2743.02(F), the magistrate conducted an evidentiary hearing to consider and determine whether Van Druenen is entitled to civil immunity pursuant to R.C. 9.86. In addition, based on the evidence presented at the hearing as well as the positions and arguments of counsel, the magistrate will also consider and determine whether Van Druenen acted within the scope of employment on October 30, 2019.

{¶2} Through counsel, plaintiff and defendant both appeared at the hearing. Van Druenen also appeared and testified as did one additional witness, Sara Hill, an assistant athletic director employed by defendant. The magistrate also admitted a copy of a spreadsheet reflecting Van Druenen's university credit card purchases during the relevant time as Exhibit A. As discussed below, the magistrate recommends that the court issue a determination that Van Druenen is not entitled to civil immunity pursuant to R.C. 9.86 and that the courts of common pleas have jurisdiction over any civil actions that may be filed against him based upon the allegations of this case. As also discussed below, the magistrate further recommends that the court issue a determination that Van Druenen acted within the course and scope of employment on October 30, 2019.

Findings of Fact

{¶3} On October 30, 2019, Van Druenen, who worked for defendant as an assistant men's soccer coach, hit plaintiff while backing his car out of a parking space. At the time, Van Druenen was present at defendant's soccer facility with the men's soccer team preparing for an away game. The team was traveling via bus and plaintiff was the bus driver. As was the team's custom, there would be a training period before the team's departure. Van Druenen arrived at the facility that day about an hour before the training period.

{¶4} It was also customary that, after the training period, Van Druenen or another assistant coach would travel to a nearby store to purchase snacks for the team and/or themselves for the bus ride. At the time Van Druenen backed out of the parking space and hit plaintiff, he was going to purchase snacks. After he hit plaintiff, Van Druenen apologized and proceeded to purchase snacks.

{¶5} Whether Mr. Van Druenen bought snacks for himself or to share with the team is unknown. Further, though Van Druenen had a university issued credit card, he did not use it on October 30, 2019. Normally, Van Druenen used the university credit card to purchase snacks for the team but sometimes he would use his own personal credit card to purchase the snacks.

{¶6} At any rate, Van Druenen was present at defendant's soccer facility that day in his role as an assistant soccer coach and for no other purpose. As part of what was a regular and customary practice, he was obtaining snacks for the team's road trip. Regardless of the means of payment or whether the snacks he intended to and/or did end up purchasing were to be shared with the team, Van Druenen's conduct was not a deviation from his established duties as an assistant coach. As he and other assistant coaches had done numerous times before, Van Druenen was simply preparing for the road trip, which was a routine, customary part of his job. Both Van Druenen's presence at the facility and the need to obtain snacks and/or other supplies for the bus ride were

directly necessitated by the team's need to travel to an away game. The magistrate finds that Van Druenen acted within the scope of employment on October 30, 2019.

Conclusions of Law and Analysis

{¶7} R.C. 2743.02(F) provides this court with "'exclusive jurisdiction to determine whether a state employee is immune from liability under R.C. 9.86.'" *Nix v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-547, 2014-Ohio-2902, ¶ 22, quoting *Johns v. Univ. of Cincinnati Med. Assocs.*, 101 Ohio St.3d 234, 2004-Ohio-824, syllabus. R.C. 9.86 states, in part:

> Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

Though whether a state employee is entitled to immunity is a question of law, its determination requires the consideration of specific facts. *Morway v. Ohio Bur. of Workers' Comp.*, 10th Dist. Franklin No. 04AP-1323, 2005-Ohio-5701, ¶ 17; *Peachock v. Northcoast Behavioral Health Ctr.*, 10th Dist. Franklin No. 07AP-195, 2007-Ohio-5160, ¶ 21. As set forth in the magistrate's findings of fact, Van Druenen was a state employee on October 30, 2019, whose alleged negligent operation of a motor vehicle is the basis of plaintiff's claims. Thus, pursuant to the plain language of R.C. 9.86, Van Druenen is not entitled to civil immunity.

{¶8} R.C. 2743.02(A)(1) provides that "filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, that the filing party has against any officer or employee." However, the "waiver shall be void if the court determines that the act or omission was manifestly outside the scope of

the officer's or employee's office or employment." Further, as Van Druenen was a state employee at the time of the accident, defendant may still be liable to plaintiff in this case based upon a theory of *respondeat superior* so long as his conduct was within the scope of employment. Whether an individual acted outside of the scope of employment is a question of fact. Even unnecessary and/or improper acts can be within the scope of employment. To be outside the scope of employment, "the act must be so divergent that it severs the employer-employee relationship. R.C. 2343.02(A)(1); *Elliott v. Ohio Dept. of Rehab. and Corr.,* 92 Ohio App.3d 772, 775-776 (10th Dist. 1994); *Jodrey v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 12 AP-477, 2013 Ohio 289, ¶ 13-16. Here, as set forth in the findings of fact, the magistrate finds that Van Druenen acted within the scope of employment on October 30, 2019.

{¶9} For the above stated reasons, the magistrate finds that Van Druenen is not entitled to immunity because plaintiff's claims arise out of his operation of a motor vehicle. The magistrate further finds that, at all times relevant, Van Druenen, acted within the scope of his employment. Therefore, it is recommended that the court issue a determination that Van Druenen is not entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas have jurisdiction over any civil actions that may be filed against him personally based upon the allegations of this case. However, it is also recommended that the court issue a determination that Van Druenen acted within the scope of employment such that plaintiff can proceed with his claims against defendant in this case. *See Elliott at 775-776; Jodrey* at ¶ 11.

{¶10} *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).

SCOTT SHEETS
Magistrate

Filed August 22, 2022
Sent to S.C. Reporter 9/26/22