[Cite as *Bentley v. Ohio Dept. of Pub. Safety*, 2025-Ohio-2174.]

IN THE COURT OF CLAIMS OF OHIO

STEVEN W. BENTLEY, et al. Plaintiffs v. OHIO DEPARTMENT OF PUBLIC SAFETY Defendant	Case No. 2024-00062JD Judge Lisa L. Sadler Magistrate Adam Z. Morris ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} Before the Court for a non-oral hearing is Defendant's Motion for Summary Judgment pursuant to Civ.R. 56 and L.C.C.R. 4(D). For the following reasons, Defendant's Motion for Summary Judgment is GRANTED.

Standard of Review

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C):

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

"[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id*. at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E):

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Facts

{¶4} Defendant submitted an Affidavit from its employee, Ohio State Highway Patrol Trooper Louis L. Quiles (Trooper Quiles), dashcam video from Trooper Quiles' patrol vehicle, and a diagram of the collision taken from the police report, with its Motion for Summary Judgment. Plaintiffs, Steven W. Bentley and Julie Bentley, submitted the deposition transcript of Plaintiff Steven W. Bentley, Trooper Quiles' body camera video, and a purported Ohio Department of Administrative Services, Office of Risk Management letter related to settlement discussions withdrawing the States' assertion of public duty immunity, with their Response in Opposition. Accordingly, the relevant pleadings and evidence submitted, viewed in a light most favorable to Plaintiffs, show the following:

{¶5} On or about February 5, 2022, Plaintiff, Steven W. Bentley, and Ohio State Highway Patrol (OSHP) Trooper Louis L. Quiles were involved in a motor vehicle collision at the intersection of State Route (S.R.) 32 and Glen Este Withamsville Road in Clermont County. (Complaint ¶ 2; Quiles Affidavit ¶ 4-7; Defendant's Exhibit A; Bentley Deposition 17:4-18:10). Plaintiff Steven was traveling eastbound on S.R. 32 proceeding straight through the intersection of Glen Este Withamsville Road on a green light. (Defendant's

Exhibit A, Bentley Deposition 17:4-10). Trooper Quiles, in a marked OSHP patrol vehicle, and in the course and scope of employment, was traveling westbound on S.R. 32, stopped at a red light in the through lane at Glen Este Withamsville Road, when he observed a white SUV in an adjacent left-turn-only lane run a red light, in violation of R.C. 4511.12, while turning left onto southbound Glen Este Withamsville Road. (Quiles Affidavit ¶ 4-5, 7; Defendant's Exhibit A). "[T]he light had been red for approximately five to six seconds at the time the driver of the white SUV ran the red light." (Quiles Affidavit ¶ 5; Defendant's Exhibit A). And, "[o]f the drivers in the two left-only turn lanes, the driver of the white SUV is the only driver that ran the red light." (Quiles Affidavit ¶ 6; Defendant's Exhibit A).

{¶6} As a trooper with the OSHP, Trooper Quiles is tasked with "promoting traffic safety" and "[t]he majority of [his] duties involve traffic enforcement, responding to accidents, and stopping motorists who violate Ohio traffic laws." (Quiles Affidavit ¶ 2).

{¶7} After witnessing the traffic violation, Trooper Quiles "initiated a pursuit of the driver of the white SUV by activating [his] overhead emergency lights and siren to stop the driver in a safe location." (Quiles Affidavit ¶ 6; Defendant's Exhibit A). Plaintiff Steven testified that he did not see or hear Trooper Quiles prior to the collision. (Bentley Deposition 16:2-3, 17:11-12). Trooper Quiles' emergency lights and siren, however, were activated prior to entering the intersection. (Quiles Affidavit ¶ 8; Defendant's Exhibit A; Bentley Deposition 15:21-16).

Law and Analysis

{¶8} Plaintiff Steven W. Bentley alleges that "[a]s a direct and proximate result of the negligence of the state patrol officer, [he] sustained serious injuries to his back, right knee and leg, shoulder, and left arm and fingers." (Complaint ¶ 4). Moreover, Plaintiff Julie Bentley alleges that "as a direct and proximate result of the [ ] negligence, she has suffered a loss of consortium with her spouse." (Complaint ¶ 8).

{¶9} Defendant asserts that it is immune from liability for any negligence on the part of Trooper Quiles pursuant to the public duty doctrine, R.C. 2743.02, and emergency call doctrine, 2744.02, *et seq*. (Defendant's Motion, p. 2, 5-7 (emergency call doctrine), 7-10 (public duty doctrine)). Defendant further asserts that Plaintiff Julie's loss of

consortium claim must then also fail because it cannot survive as a standalone claim. (Defendant's Motion, p. 10).

{¶10} Plaintiffs assert that a genuine issue of material fact exists as to whether Trooper Quiles was on an emergency call, Trooper Quiles' actions were willful or wanton misconduct, and the public duty doctrine was waived. (Plaintiffs' Response, p. 1-5).

{¶11} Defendant, however, asserts that no claims remain to be litigated because Plaintiffs have not pleaded willful or wanton conduct on the part of Trooper Quiles as to provide a defense to the emergency call doctrine, Plaintiffs did not plead a waiver type cause of action related to public duty immunity, and Plaintiffs otherwise did not address Defendant's public duty immunity argument. (Defendant's Reply, p. 1-4).

{¶12} The Supreme Court of Ohio has held that "[i]n the absence of willful or wanton misconduct, the State Highway Patrol is immune from liability for injuries caused by a patrol officer in the operation of his vehicle while responding to an emergency call." *Baum v. State Hwy. Patrol*, 72 Ohio St.3d 469, 472 (1995). "In adopting this rule of law, the Supreme Court of Ohio reasoned that the state should enjoy the same level of immunity that the General Assembly affords to counties, cities, and townships." *Robertson v. Dept. of Pub. Safety*, 2007-Ohio-5080, ¶ 13 (10th Dist.), citing *Baum* at 472. "Pursuant to R.C. 2744.02(B)(1)(a), counties, cities, and townships are immune from liability when '[a] member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct.'" *Id.*

{¶13} For purposes of R.C. Chapter 2744, "'[e]mergency call' means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer." R.C. 2744.01(A). An emergency call in this context "need not involve an inherently dangerous situation." *Smith v. McBride*, 2011-Ohio-4674, ¶ 21. Rather, the determination "turns on whether an officer was acting pursuant to a call to duty at the time of the accident." *Id.*; *see also Posner v. Dept. of Pub. Safety*, 2000 Ohio App. LEXIS 4496, *7 (10th Dist. Sept. 29, 2000) ("The focus, rather, is whether an immediate response is required."). "[A] 'emergency call' as defined in R.C.

2744.01(A) involves a situation to which a response by a peace officer is required by the officer's professional obligation." *Colbert v. City of Cleveland*, 2003-Ohio-3319, ¶ 15.

{¶14} Defendant asserts that Trooper Quiles was responding to an emergency call at the time of the collision after personally witnessing the white SUV run a red light. Plaintiffs, however, argue that "[t]he officer had the ability to follow the traffic signals and thereafter pursued the violator who would have easily been located in all probability. An Officer cannot create an emergency situation where none exists." (Plaintiffs' Response, p. 5). While Plaintiffs do not provide any legal citations to support this premise, this Court and others have found that pursuit of a motorist running a red light can invoke the emergency call doctrine because the officer is responding to their professional obligation to stop motorists who violate Ohio traffic laws. *See Marquez, et al. v. Ohio Dept. of Pub. Safety*, 2023-Ohio-4141, ¶ 4, 8 (Ct. of Cl.) (this Court found emergency call doctrine applied after an OSHP trooper witnessed a motorist run a red light, even though the trooper turned into another vehicle before initiating emergency lights and siren); *see also Birtcher v. City of Columbus*, 2014 Ohio Misc. LEXIS 3863, *23-26 (Franklin C.P. 2014) (office was responding to a call of duty and operating a motor vehicle while responding to an emergency call when responding to an immediate and exigent circumstance that he had witnessed, a motorists running a red light causing him to slam on his brakes). Accordingly, the evidence presented pursuant to Civ.R. 56(C) shows that Trooper Quiles was initiating the pursuit of a driver whom he personally observed run a red light, well after the light had cycled to red, and initiated his emergency lights and siren before entering the intersection. As such, reasonable minds can only conclude that Trooper Quiles was responding to an emergency call at the time of the collision.

{¶15} As previously stated, the decision of the Supreme Court of Ohio in "*Baum* . . . precluded liability for negligence arising out of a state trooper's operation of his vehicle while responding to an emergency call . . . ." *Wallace v. Ohio Dept. of Commerce*, 2002-Ohio-4210, ¶ 31, fn. 9. Therefore, under *Baum*, Defendant is entitled to immunity as a matter of law on Plaintiffs' claim of negligence, which is the sole theory of liability in their Complaint. Although Plaintiffs argue that "at a minimum there is a question of fact as to whether [Trooper Quiles] conduct entering the intersection without being able to view oncoming traffic constitute willful and wanton misconduct," Plaintiffs did not plead or

subsequently amend their Complaint to reflect a claim for the "willful or wanton misconduct" standard required for overcoming Defendants' immunity pursuant to R.C. 2744.02(B)(1)(a), which bars them from "raising these issues on summary judgment." *Munday v. Lincoln Heights*, 2013-Ohio-3095, ¶ 39 (1st Dist.) (In relation to the "willful or wanton misconduct" standard pursuant to R.C. 2744.02(B)(1)(a), "because [plaintiff] failed to allege that [the officer's] operation of the police cruiser while responding to an emergency call constituted willful or wanton misconduct, the village successfully asserted the defense set forth in R.C. 2744.02(B)(1)(a) to [plaintiff's] claim [of negligence]."); *see also Pitzer v. Blue Ash*, 2019-Ohio-2889, ¶ 7 (1st Dist.) (In relation to the "willful or wanton misconduct" standard pursuant to R.C. 2744.02(B)(1)(b), "[plaintiff's] failure to plead correctly, or subsequently amend the complaint to reflect this standard, barred [plaintiff] from raising these issues on summary judgment."); *Williams v. Stefka*, 2012-Ohio-353, ¶ 16 (8th Dist.) (In relation to the "willful or wanton misconduct" standard pursuant to R.C. 2744.02(B)(1)(c), "under such circumstances a party is precluded from arguing genuine issues of material fact as to willful and wanton misconduct on summary judgment.").

{¶16} As such, Plaintiff Julie Bentley's claim for loss of consortium must also fail. A claim for loss of consortium "is derivative in that the claim is dependent upon the defendant's having committed a legally cognizable tort upon the spouse who suffers bodily injury." *Bowen v. Kil-Kare, Inc.*, 63 Ohio St.3d 84, 93 (1992). Accordingly, because no claims remain for trial related to Plaintiff Steven W. Bentley, Plaintiff Julie Bentley's claim shall not remain viable for trial on its own.

{¶17} It is noted that, in addition to the immunity furnished under *Baum* and R.C. 2744.02(B)(1)(a), Defendant argues that it is also immune from liability under the public duty rule set forth in R.C. 2743.02(A)(3)(a) ("Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty."). Because *Baum* and R.C. 2744.02(B)(1)(a) plainly confer Defendant with immunity on Plaintiffs' claim of negligence, however, the Court need not determine the applicability of the public duty rule, or any other arguments by the parties otherwise related to the public duty rule, which is independent of the rule established in *Baum*. *See Wallace* at ¶ 31, fn. 9 ("*Baum* did not,

however, involve the public-duty rule."); *see generally Dunlap v. Ohio Dept. of Pub. Safety*, Ct. of Cl. No. 2016-00302 (June 7, 2017).

{¶18} Upon review, the Court finds that the Civ.R. 56(C) evidence submitted establishes that there is no genuine issue of material fact as to whether Defendant is immune from Plaintiffs' claims of negligence. Accordingly, Defendant is entitled to judgment as a matter of law.

{¶19} For these reasons, Defendant's Motion for Summary Judgment is GRANTED. Judgment is rendered in favor of Defendant. All previously scheduled events are VACATED. Court costs are assessed equally against Plaintiffs. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

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