

IN THE COURT OF CLAIMS OF OHIO

CADEN BAILEY

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2025-00461JD

Judge Lisa L. Sadler
Magistrate Gary Peterson

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} Plaintiff brings this action for negligence arising from a fall he suffered while riding an electric scooter on the campus of defendant, Kent State University. On March 5, 2026, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff filed a response on March 30, 2026. Defendant filed a reply, with leave of court, on April 13, 2026. The motion is now before the Court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4. For the reasons explained below, the motion shall be granted.

Standard of Review

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “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 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." *See also Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 6, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} "The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact." *Starner v. Onda*, 2023-Ohio-1955, ¶ 20 (10th Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). "The moving party does not discharge this initial burden under Civ.R. 56 by simply making conclusory allegations." *Id.* "Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.* "Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Hinton v. Ohio Dept. of Youth Servs.*, 2022-Ohio-4783, ¶ 17 (10th Dist.), citing *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 430 (1997); Civ.R. 56(E).

Factual Background

{¶5} There is no dispute that defendant and Spin, an eBike and eScooter provider, entered into a partnership to provide electric bikes and electric scooters to be used on defendant's campus. (Affidavit of Dr. Dominique L. Hill, Exhibit A). As a condition to use an eScooter, plaintiff agreed to Spin's "Terms and Conditions." (Affidavit of Christina Andrews, Exhibit B). The Terms and Conditions contain a section captioned "Release of Liability." *Id.* The Release provides, in relevant part as follows:

AS A CONDITION OF USING THE SERVICES (INCLUDING FOR CLARITY AND WITHOUT LIMITATION, ANY SPIN SCOOTER) YOU HEREBY ACCEPT AND AGREE TO THIS 'RELEASE OF LIABILITY,' INCLUDING ANY DEFINED TERMS THEREIN.

You acknowledge that use of Spin's . . . electric kick scooters . . . is an inherently dangerous recreational activity that involves both obvious and non-obvious risks of physical harm, including the risk of death to you and others, as well as damage to property, and that these types of risks can be

unforeseeable and sometimes cannot be avoided. To the fullest extent permissible by applicable law, you, on behalf of yourself, your family, your heirs, your agents, your affiliates, your representatives, your successors, your guardians and your assigns (collectively the 'Releasing Parties'), agree to indemnify, hold harmless and forever release and discharge the Released Persons (as defined below) from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, and liabilities of any nature, type or description, whether arising in tort (including negligence), contract, strict liability, or any other legal theory, whether known or unknown, contingent or vested, in law or in equity whether or not we have been advised of the possibility of such damage, including but not limited to, property loss or damage, personal injury or loss of life, regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of these Terms, your use of a Spin Scooter, the Services, the Site, the App, and/or any of the equipment that Spin provides to You (collectively the "Released Claims"). 'Released Persons' as used herein means . . . any . . . government entity . . . and . . . educational institution (including, without limitation, public and private universities and colleges. . .) . . . This Release is intended to be a general and complete release of all Claims and all Released persons may plead the existence of this Release as a full and complete defense to any Claim.

(Christina Andrews Affidavit, Exhibit B).

{¶6} Prior to plaintiff arriving on defendant's campus, defendant held a senior carnival, which was a celebration of the seniors and included food trucks, carnival rides, and games. Rebekkah Berryhill Depo, p. 12:18-22. To access the location of the carnival, a bollard was removed from the esplanade allowing a contractor to get its equipment to the location of the carnival. *Id.* 13:3. The bollard is secured to the concrete on a caged-base with a pin that locks the bollard into place. *Id.* 13:13-18. After the contractor went through, the bollard was rolled back over the cage and dummy-locked, so it would look as if it was locked, although it was not locked. *Id.* 14:1-6. The contractor was scheduled to remove all equipment on May 11, 2023, but the contractor scheduled to load out the

equipment did not arrive. *Id.* 15:11-17. As a result, the bollard was rolled in front of the cage, so the contractor could access the area to remove the equipment when the contractor arrived. *Id.* 16:2-22. At approximately, 3:00 a.m., on May 12, 2023, an unknown third party stole the bollard. *Id.* 18:11-14. Friday May 12, 2023, during the workday, Rebekkah Berryhill, manager of the grounds department, became aware of the missing bollard. *Id.* 18:21-23.

{¶7} On May 12, 2023, plaintiff, who is not and has never been a student at the university, and some of his friends, went to defendant's campus in the evening with plans to ride scooters and "pass some time." Bailey Depo. p. 11:21-23; 16:8-17:2. Plaintiff was wearing shorts and a t-shirt, as the weather was warm and dry, and he arrived on campus at about 9:00 p.m. *Id.* 18:4-21; 19:3-5. Plaintiff and his friends rode the scooters for about two hours, and it was "dark out or getting dark" at the time of the incident. *Id.* 20:13-15. Plaintiff rode the scooter by the base of the bollard at least two times prior to the incident, but he did not notice the cage with the bollard missing. *Id.* 21:15; 23:5-8. Plaintiff was traveling at approximately 15-16 miles per hour when he struck the metal cage base where the bollard was missing. *Id.* 25:12-16. Plaintiff subsequently crashed, suffering significant injuries to his chin, face, and hands. *Id.* 26:15-27:11. After the accident, plaintiff looked back and saw the metal base of the bollard with a hollow center sticking up about 2-3 inches out of the concrete. *Id.* 29:22-24. Plaintiff brings this action for the "negligent, careless, and/or reckless conduct of the defendant." Complaint, ¶ 11.

Law and Analysis

Release of Claims

{¶8} In its motion for summary judgment, defendant argues that plaintiff released any claims he could have asserted against defendant by agreeing to the Terms and Conditions for use of the scooter. As pointed out above, in order to use the scooter, plaintiff agreed to the Terms and Conditions set forth by Spin. Within the Terms and Conditions, plaintiff agreed to a release of liability. In response, plaintiff argues that defendant is at best an incidental beneficiary of the contract between plaintiff and Spin, and as a result, defendant cannot avail itself of the release of claims contained therein.

{¶9} Although defendant was not a party to the contract between plaintiff and Spin, reasonable minds can only conclude that defendant was an intended third-party beneficiary of the release. “[A] beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and . . . the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.” *Huff v. First Energy Corp.*, 2011-Ohio-5083, ¶ 10, quoting Restatement of the Law 2d, Contracts (1981), Section 302(1)(b). “Under this analysis, if the promisee . . . intends that a third party should benefit from the contract, then that third party is an ‘intended beneficiary’ who has enforceable rights under the contract. If the promisee has no intent to benefit a third party, then any third-party beneficiary to the contract is merely an ‘incidental beneficiary,’ who has no enforceable rights under the contract. *Id.* at ¶ 11 (cleaned up); *Bungard v. Dept. of Job & Family Servs.*, 2007-Ohio-6280, ¶ 23 (10th Dist.). An intended third-party beneficiary “acquires rights under the contract as well as the ability to enforce the contract once those rights have vested.” *Reif v. Wagenbrenner*, 2011-Ohio-3597, ¶ 32 (10th Dist.). A third-party beneficiary need not be explicitly named in the contract as long as the third party is contemplated by the parties and sufficiently identified. *Gallagher Sharp, L.L.P. v. Miller Goler Faeges Lapine, L.L.P.*, 2019-Ohio-2113, ¶ 33 (8th Dist.).

{¶10} Releases are contracts, subject to the normal rules of contract construction in that “intent is presumed to reside in the language the parties chose to employ in the agreement, and the intention of the parties governs the interpretation of releases.” *Jacob v. Grant Life Choices Fitness Ctr.*, 1996 Ohio App. Lexis 2313, *6 (June 4, 1996 10th Dist.). If unambiguous, “a court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Id.* at 7-8. Absent an ambiguity, the interpretation of a release is a question of law and “intentions not expressed in the writing are deemed to have no existence and may not be shown by parol evidence.” *Id.* at *10. As stated previously, a “third-party beneficiary need not be named in the contract as long as the third-party is contemplated by the parties and sufficiently identified.” *Id.* at *10-11.

{¶11} The Terms and Conditions illustrate that defendant is an intended third-party beneficiary of the contract between plaintiff and Spin. As a part of the Terms and

Conditions, plaintiff agreed to a release of liability. In the release of liability, plaintiff agreed to release all “Released Persons” from “all injuries, demands, losses, damages costs, loss of service, expenses, compensation, claims, suits, cause of actions . . . whether arising in tort (including negligence), contract, strict liability, or any other legal theory . . . including but not limited to . . . personal injury . . . that (a) relate to, are based on, concern, or arise out of . . . your use of a Spin Scooter.” (Affidavit of Christina Andrews, Exhibit B). The release was entered into with the intention to benefit the released persons by releasing or insulating the released persons from liability arising out of the use of the scooter by the promisee. The release outlines what types of claims would be released and identifies who benefits from the release, i.e., the released persons. Thus, the agreement reflects an intention by the plaintiff and Spin to release from liability the released persons.

{¶12} The contract defines “Released Persons” to include educational institutions, including public universities “with which Spin has contracted or at which Spin is providing Services.” (Affidavit of Christina Andrews, Exhibit B). There is no dispute that defendant is a public university at which Spin is providing services or has contracted, and defendant is thus a released person pursuant to the Terms and Conditions.

{¶13} The court finds the release is not ambiguous. In fact, plaintiffs do not argue ambiguity. The court, therefore, can only determine the intent of the parties through the language employed in the release. The language used in contracts, including settlement agreements and releases, should be ascribed its plain and ordinary meaning. See *Wilson v. Durrani*, 2014-Ohio-1023, ¶ 15-16 (1st Dist.). Here, as pointed out above, plaintiff agreed to release defendant from “any and all injuries, demands, losses, damages costs, loss of service, expenses, compensation, claims, suits, cause of actions . . . whether arising in tort (including negligence), contract, strict liability, or any other legal theory . . . including but not limited to . . . personal injury . . . that (a) relate to, are based on, concern, or arise out of . . . your use of a Spin Scooter.” (Affidavit of Christina Andrews, Exhibit B). The release goes on to state “This Release is intended to be a general and complete release of all Claims and all Released Persons may plead the existence of This Release as a full and complete defense to any Claim.” *Id.* The unambiguous language of the release expresses the intention of the parties to release defendant from personal injury

claims whether arising in tort or any other legal theory that arise out of plaintiff's use of the scooter.

{¶14} Plaintiff argues that pursuant to section 15.11 of the Terms and Conditions, there are no third-party beneficiaries to the contract. 15.11 of the Terms and Conditions captioned **No Third-Party Beneficiaries** provides "You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to these Terms." (Affidavit of Christina Andrews, Exhibit B). While that section plainly states that there are no third-party beneficiaries, *other than expressly provided*, the Terms and Conditions sets forth and identifies third-party beneficiaries in the release as explained above. Therefore, the release has expressly identified third-party beneficiaries as the released persons in the release. As previously stated, the release then goes on to state that the released persons may plead the existence of the release as a full and complete defense to any claim. When the contract is read as a whole, 15.11 does not apply in this situation as the third-party beneficiaries are expressly provided, as the Released Persons, in the release. Accordingly, reasonable minds can only conclude that defendant is a Released Person pursuant to the Terms and Conditions, and that plaintiff's claim is barred by the release of liability. Because the release bars plaintiff's claim, there is no need to analyze defendant's additional arguments. Accordingly, defendant is entitled to judgment as a matter of law.

Conclusion

{¶15} Based on the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Defendant's motion for summary judgment is GRANTED, and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. 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.

LISA L. SADLER

Judge

Filed April 24, 2026
Sent to S.C. Reporter 5/12/26