

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

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DAVID BRANDON HEARLD)
and CHRISTINA HEARLD,) Claim No. T20130381
)
Claimant.)
v.)
)
STATE OF TENNESSEE)
) Regular Docket
Defendant;)

**SUMMARY JUDGMENT FOR THE DEFENDANT AND
DISMISSAL OF CLAIM**

The Claimants seek damages arising from police pursuit over the public roads of Cookeville and Putnam County Tennessee. Claimant, David Hearld, was driving a motorcycle without an affixed license plate. State Trooper Michael Loftis observed Mr. Hearld and attempted to pull him over. When the Claimant refused to pull over, a high-speed pursuit ensued. After approximately eight miles, the Claimant stopped fleeing. The Claimant was then struck by the Trooper. Kenneth S. Williams, Esq., appeared for the Claimants. Assistant Attorney General Rebecca Lyford represented the State.

The State has filed a Motion for Summary Judgment alleging that Tenn. Code Ann. 55-8-108(e) bars claims for injuries proximately or indirectly caused to

an actual or suspected violator of the law who is fleeing pursuit by law enforcement. A hearing was held on the motion on October 10, 2014.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Tennessee Rules of Civil Procedure provides that summary judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law.

Statements of Undisputed Material Facts

Both parties have submitted statements of undisputed material facts.

Although the parties have not agreed to all the statements each has proffered, they have agreed concerning many material facts that will enable the Tribunal to render a judgment in this claim based on the law. The Tribunal makes a specific finding that any facts that are in dispute would not affect the Tribunal's findings in this judgment.

Both parties have agreed to the following statements of material facts:

On Wednesday, January 18, 2012, at 2:14 pm, Michael Loftis, ("Trooper Loftis") observed Claimant, David Hearld, ("Claimant") driving a

motorcycle on a public street in the Cookeville city limits without a license plate. (Michael Loftis Affidavit, paragraph 2).

Claimant was knowingly driving without a license plate, without insurance, and without a driver's license. (Deposition of David Hearld, pg. 60, lines 20-22).

After Trooper Loftis observed Claimant driving a motorcycle without a license plate he activated the siren and emergency lights on his vehicle. Claimant failed to pull over and instead accelerated quickly away from Trooper Loftis. At that point, Trooper Loftis commenced pursuit of Claimant. (Loftis Affidavit, paragraph 3).

The pursuit lasted approximately three and a half minutes and reached speeds around 80 miles per hour. (Loftis Affidavit, paragraph 4).

Standard practice regulations for highway patrol officers in pursuit situations are set out in General Order No. 441, and require officers to weigh among other factors the nature of the offense to determine whether the danger posed by a violator outweighs the danger of pursuit to the public at large. (Loftis dep., Exh. 1).

General Order No. 441 defines a fleeing felon as one who "is/are avoiding apprehension" and who the officer has reason to believe has

committed a felony, and provides that "[a] person shall not be considered a fleeing felon when the only reason he/she is avoiding apprehension is for a misdemeanor traffic offense." (Loftis dep., Exh. 1).

General Order No. 441 lists the factors to be considered in deciding whether to initiate a pursuit, including (1) the safety of the public, (2) the seriousness of the offense and whether, if allowed to flee, the suspect would present a danger to human life or cause serious injury, (3) whether an opportunity for subsequent arrest might exist, (4) weighing the speed, traffic volume, road surface, time of day, nature of the pursuit area, condition of the pursuit vehicle and things of this nature. (Loftis dep., Exh. 1).

General Order No. 441 provides that a pursuit should be terminated when, among other reasons, (1) it is ordered by a supervisor, (2) dangers created to others by the pursuit outweigh the need for immediate apprehension, and (3) when road conditions or traffic volume make it too hazardous for pursuit to continue. (Loftis dep., Exh. 1).

As shown on the videotape, the claimant went into oncoming traffic during the pursuit, he crossed the centerline several times, he passed vehicles on a double yellow line, and he almost struck another vehicle head

on while the pursuit was in progress. (Loftis dep., pp. 31, 76, 81; Exh. 3, statement of Loftis; and videotape at Exh. 6).

Despite the bad and dangerous driving of the claimant during the chase, Officer Loftis did not consider ending the pursuit. (Loftis dep., p. 75).

Officer Loftis acknowledged that relevant factors to consider that weigh into whether to continue a pursuit include speed, traffic conditions, what the suspect has done, if there was a suspected misdemeanor or felony, curves in the road and surrounding traffic. (Loftis dep., pp. 21-22).

As this pursuit continued, the claimant almost struck another vehicle head on and his driving was erratic. (Loftis dep., p. 76; Exh. 3, statement of Loftis; and videotape at Exh. 6).

After passing through this intersection, Officer Loftis continued to pursue the claimant onto a winding or curvy country road only some 20 feet wide, with a posted 35 mph speed limit, and going at speeds approaching 80 mph. (Loftis dep., pp. 78-79; Exh. 3, statement of Loftis; and videotape at Exh. 6).

Officer Loftis had lived on or near the roads where this pursuit occurred for 52 years, had driven the road three to four times a day, and was familiar with the area. (Loftis dep., p. 27).

While Officer Loftis did not fear for his own safety, he believed that the claimant was a danger to himself, based on his poor driving ability and because he had already run off the road three or four times, and he acknowledged that there was always a danger to the public whenever a pursuit was involved. (Loftis dep., pp. 76, 79; and videotape at Exh. 6).

As this pursuit continued, the claimant passed several cars on curves and such, and was a danger to himself and others. (Loftis dep., pp. 27-28, 31; Exh. 3, statement of Loftis; and videotape at Exh. 6).

Officer Loftis backed up and turned the back end of his patrol car into the grass and stopped with the back wheels off the pavement, so that his patrol car was facing the claimant. (Hearld dep., pp. 65-67, 125; Loftis dep., pp. 36-37, and videotape at Exh. 6).

Officer Loftis then accelerated forward, believing that the claimant was still fleeing, then tried to tap his brakes at almost the same time when he realized he was not fleeing, and struck the claimant with the patrol car. (Loftis dep., pp. 36-37, and videotape at Exh. 6).

Although claimant was at a complete stop with hand raised when hit, and believes he was at a complete stop with hand raised when Officer Loftis stopped backing up, he acknowledges that the bike may have been

slightly rolling because claimant could not operate the brake, the road sloped downhill, the motorcycle weighed some 1000 pounds, the brake was located on the right handlebar, and his right hand was raised. (Hearld dep., pp. 67-68, 125).

Officer Loftis may have subjectively believed that the claimant was in motion when the patrol car was facing him, but even if so, he acknowledged that the claimant was at most going two mph at the time he was struck. (Loftis dep., p. 71, and videotape at Exh. 6).

In the audio portion of the videotape, which remained on after the accident, Officer Loftis admitted to an unidentified third party that he hit the claimant by mistake. (Loftis dep., pp. 50-51, and videotape at Exh. 6 (at 2:27)).

The parties have also agreed to the videotape of the pursuit made from Trooper Loftis' patrol car. The Tribunal has found the videotape to be probative.

CONCLUSIONS OF LAW

The Claims Commission's jurisdiction over this action is set forth in Tenn.

Code Ann. § 9-8-307(a)(1)(A), which states:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

* * *

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance....

Tenn. Code Ann. § 9-8-307(c) provides that the State's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Under these concepts, a plaintiff in a negligence action must prove (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App.2001). Tennessee law also requires that an operator of a motor vehicle use reasonable care under all circumstances.

Based on the agreed material facts, it is clear to the Tribunal that:

1. Claimant intentionally led Trooper Loftis on a high-speed pursuit.
2. After approximately three and a half minutes, Claimant surrendered his flight and attempted to submit himself to the authority of Trooper Loftis.
3. Trooper Loftis accidentally struck the Claimant at the end of the pursuit.

The Claimant alleges that the Summary Judgment Motion should be denied based on Tenn. Code Ann. § 55-8-108 in that emergency vehicle drivers

have the affirmative duty to drive with due regard for the safety of all persons.

The statute reads:

(a) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated in this section.

(b)(1) A driver of an authorized emergency vehicle operating the vehicle in accordance with subsection (a) may:

(A) Park or stand, notwithstanding other provisions of this chapter that regulate parking or standing;

(B) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(C) Exceed the speed limits so long as life or property is not thereby endangered; and

(D) Disregard regulations governing direction of movement or turning in specified directions.

(2) Subdivision (b)(1) shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall subdivision (b)(1) protect the driver from the consequences of the driver's own reckless disregard for the safety of others.(Emphasis added)

(c)(1) The exemptions granted under subsection (b) to a driver of an authorized emergency vehicle shall only apply when the vehicle is making use of audible and visual signals meeting the requirements of the applicable laws of this state, except that while parked or standing, an authorized emergency vehicle shall only be required to make use of visual signals meeting the requirements of the applicable laws of this state.

(2) Nothing in this section shall be construed to prohibit the driver of an authorized emergency vehicle, while parked or standing, from making use of both audible and visual signals meeting the requirements of the applicable laws of this state, in the discretion of the driver.

(d) An authorized emergency vehicle operated as a police vehicle may be equipped with or display a red light only in combination with a blue light visible from in front of the vehicle.

(e) Notwithstanding the requirement of this section that drivers of authorized emergency vehicles exercise due regard for the safety of all persons, no municipality or county nor the state or any of its political subdivisions, nor their officers or employees, shall be liable for any injury proximately or indirectly caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from pursuit shall not render the law enforcement personnel, or the employers of the law enforcement personnel, liable for injuries to a third party proximately caused by the fleeing party unless the conduct of the law enforcement personnel was negligent and that negligence was a proximate cause of the injuries to the third party. (Emphasis added)

Tenn. Code Ann. § 55-8-108

Furthermore, the Claimant argues that Claimant was not “fleeing pursuit” at the time of his injury. Claimant states that the pursuit was over and his injury occurred after the pursuit.

However, the Tribunal finds that regardless of the subjective intent of the Claimant in surrendering his flight, his injuries, at the very least, were indirectly caused by his decision to avoid apprehension and flee. Claimant had an affirmative duty to stop when Trooper Loftis activated his emergency equipment. He chose not to do so. Just because he chose to stop after a three and a half minute high-speed pursuit, does not exculpate him from the

consequences of his decision to flee. There is a reason that the General Assembly used the words "indirectly caused" and they apply to the instant set of facts. He is barred, based on this section of the statute (e), from recovering damages from the State.

IT IS, THEREFORE, ORDERED:

1. Summary Judgment is granted to the Defendant, State of Tennessee.
2. The claim is respectfully dismissed.
3. The Court costs, if any, are taxed to the Claimant.

ENTERED this 17 day of November, 2014.



ROBERT N. HIBBETT
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 19th of November, 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission