

FILED
OCT 27 2023

22ND JUDICIAL CIRCUIT
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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

JAMECIA WOOTEN,)
)
Plaintiff,)
) Cause No. 1722-CC11777
v.)
) Division No.: 7
CITY OF EAST ST. LOUIS,)
ILLINOIS, d/b/a/ EAST ST.)
LOUIS POLICE)
DEPARTMENT, et al.,)
)
Defendants.)

JARED HERROD,)
)
Cross-Claim Plaintiff,)
)
v.)
)
CITY OF EAST ST. LOUIS,)
ILLINOIS, d/b/a/ EAST ST.)
LOUIS POLICE)
DEPARTMENT, et al.,)
)
Cross-Claim Defendants.)

ORDER AND JUDGMENT

Before this Court is Defendants/Cross-Claim Defendants City of East St. Louis and East St. Louis Police Department's (collectively, "the Police" and "Defendants") Alternative Joint Motion for Summary Judgment on the Claim of Plaintiff Jamecia Wooten ("Wooten") and Defendant/Cross-Claim Plaintiff Jared Herrod ("Herrod") (collectively, "Plaintiffs").

Also before this Court is Defendants/Cross-Claim Defendants City of East St. Louis and East St. Louis Police Department's Motion to Strike Plaintiff's Expert Charles Drago. The motions were called and argued on August 25, 2023 and August 31, 2023, and taken under submission on August 31, 2023. The parties consented to the late submission of any responses or replies and this Court has reviewed and considered everything presented by the parties with regard to these motions. Having been fully briefed, this Court now concurrently rules as follows:

This matter arises from a police chase from Illinois to Missouri, and a motor vehicle collision that occurred on December 13, 2016, involving a stolen Ford Taurus ("Taurus") and a tractor trailer in the City of St. Louis, Missouri. Herrod was driving the Taurus, and Lonnie Johnson, Jr. ("Johnson") was the passenger at the time of the collision. As a result of the collision, Herrod and Johnson were seriously injured. Eventually, Johnson died from his injuries. At issue is causation for the collision and the resulting injuries and death.

In her petition, Wooten alleges that the Police, Defendant Police Officers Henson, Luther Woods, Jason Hicks, Cantrell

Patterson (collectively, "Officers")¹, and Herrod caused the wrongful death of her son, Johnson.

In Count I, Wooten alleges that the Police are vicariously liable for all of the tortious and negligent acts or omissions committed by the Officers who were employed by the Police at the time of Johnson's death. Also, Wooten alleges that the Police are not protected by Missouri sovereign immunity or damage caps because the Police and the Officers are Illinois police officers without the protections or privileges enumerated for Missouri public entities within the State of Missouri. Additionally, Wooten alleges that Johnson's death was the direct and proximate result of the Police's negligence and reckless conduct. See Para. No. 12, Petition.

In Count II, Wooten alleges that while driving the Taurus, Herrod negligently failed to keep a careful look out, drove at an excessive speed, and struck the side of a tractor trailer causing Johnson's death. Wooten also alleges that Johnson's death was a direct and proximate result of Herrod's negligence. See Para. No. 15, Petition.

On March 21, 2018, Herrod filed a single count cross-claim against the Police and the Officers² alleging the Officers acted

¹ The individual police officers have not been served with the Summons and Petition in this matter.

² The individual police officers have not been served with the Summons and Counter-Claim.

within the course and scope of the employment for the Police when they negligently and recklessly caused Herrod's injuries. Herrod also alleges as a direct and proximate result of the Officers' negligence, Herrod suffered catastrophic injuries.

Both Wooten and Herrod allege that the Defendants violated their duty of care by negligently and recklessly pursuing the Taurus at high rate of speed, failing to follow police policies, and failing to terminate the pursuit which they allege directly caused Johnson's death and Herrod's injuries.

On April 12, 2023, the Court entered an Order finding: that Wooten's and Herrod's negligence claims accrued in Missouri because the final collision, death, and injuries occurred in Missouri; and, that Illinois' statute of limitation does not bar Plaintiffs' claims.

Now, the Police move for summary judgment on Wooten's Petition, and Herrod's Counter-Claim, arguing that based on undisputed facts, the Police were not the proximate cause of the motor vehicle accident that caused Johnson's death or Herrod's injuries. In response, Wooten argued summary judgment is not appropriate because Plaintiff's expert opined that Defendants were the proximate cause of Johnson's death and Herrod's injuries. Herrod adopted and incorporated Wooten's response to the motion as his own.

Legal Standard

When ruling on a motion for summary judgment, the court must determine whether the moving party has "the undisputed right to judgment as a matter of law," on the basis of facts about which there is no genuine dispute. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. banc 1993). The party moving for summary judgment bears the burden of establishing a right to judgment as a matter of law. *Id.* "The burden on a summary judgment movant is to show a right of judgment flowing from facts about which there is no genuine dispute." *Safe Auto Ins. Co. v. Hazelwood*, 404 S.W.3d 360, 362-63 (Mo. App. S.D. 2013). "These summary judgment principles do not require the circuit court or any appellate court to sift through the entire record to identify disputed issues, which, in turn, would cause a court to impermissibly act as an advocate for a party." *Green v. Fotoohigham*, 606 S.W.3d S.W.3d 113, 118 (Mo. 2020).

Once the movant has made a prima facie showing of entitlement to summary judgment, the non-movant has the obligation to respond. *Id.* at 119. "[F]acts contained in affidavits or otherwise in support of the party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion. *Id.* at 116. "Courts do not weigh conflicting

evidence or make credibility determinations." *Brentwood Glass Co. v. Pal's Glass Serv.*, 499 S.W.3d 296, 302 (Mo. banc 2016). "Instead, summary judgment tests simply for the existence, not the extent of genuine issues of material fact, viewing the evidence in the light most favorable to the non-moving party." *Id.* The non-movant must provide support for each denial including "specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial." Rule 74.04(c)(2). Each response shall include an attached copy of all discovery, exhibits or affidavit which it relies upon. *Id.* If a response does not comply with Rule 74.04(c)(2), it is deemed an admission. *Id.*

The non-movant "may also set forth additional material facts that remain in dispute, which shall be presented in consecutively numbered paragraphs and supported in the manner prescribed by Rule 74.04(c)(1)." Rule 74.04(c)(2). "If the adverse party's response to the motion for summary judgment sets forth additional material facts that remain in dispute, 'movant shall set forth each additional statement of fact in its original paragraph number and immediately thereunder admit or deny each such factual statement.'" *Eivins v. Mo. Dep't of Corr.*, 636 S.W.3d 155, 175 (Mo. App. W.D. 2021), quoting Rule 74.04(c)(3). Each denial of the additional statement "shall be supported in the manner prescribed

by Rule 74.04(c)(2)" and mere denials are not sufficient. *Id.* at 175-176, See also Rule 74.04(c)(3).

"A 'genuine' dispute is a real and substantial one, not one consisting merely of conjecture, theory, and possibilities." *Brown v. Seven Trails Inv'rs, LLC*, 456 S.W.3d 864, 867 (Mo. App. E.D. 2014). "Facts come into a summary judgment record only via Rule 74.04(c)'s numbered-paragraphs-and-responses framework." *Davis v. Johnson Controls, Inc.*, 549 S.W.3d 32, 37 (Mo. App. E.D. 2018) (citation omitted). The court views "all the legally admissible evidence in a light most favorable to the non-moving party, giving the non-movant the benefit of all reasonable inferences from the record." *Brown v. Seven Trails Inv'rs, LLC*, 456 S.W.3d at 868. "A trial court grants or denies motions for summary judgment on the basis of what is contained in the motion for summary judgment and the responses thereto...[and] does not extend to the entire record before the trial court." *Great S. Bank v. Blue Chalk Constr., Ltd. Liab. Co.*, 497 S.W.3d 825, 835 (Mo. App. S.D. 2016) (citation omitted). The courts "will not consider 'facts' that are not set out as 'facts in dispute.'" *Id.*

This Court finds each party admitted nearly all of the statements of material facts, including by failing to comply with Rule 74.04(c)(2) (For instance, all parties denied at least some allegedly undisputed material facts without supporting "each

denial with specific references to the discovery, exhibits or affidavits" as required by the rules). "Material facts admitted by the nonmovant are established for purposes of a summary judgment motion." *Premium Invs., LLC v. Lowther Johnson, Attys. at Law, LLC*, 575 S.W.3d 744, 751 (Mo. App. S.D. 2019).

Additionally, Plaintiffs relied solely on their police procedure expert's opinion in their Statement of Additional Uncontroverted Material Facts, Nos. 19 to 25. In order for the court to rely on an expert opinion as a material fact for summary judgment purposes, the expert's testimony must be relevant and reliable pursuant to §490.065. The expert testimony "is reliable if it is based on sufficient facts or data, reliable principles and methods and reliable application thereof." *Gebhardt v. Am. Honda Motor Co.*, 627 S.W.3d 37, 44 (Mo. App. W.D. 2021). If there is an analytical gap between the data and the expert's opinion, the testimony is not reliable for summary judgment purposes, but is instead conjecture. *Id.* at 45.

Accordingly, the material and undisputed facts before this Court for purposes of Defendants' motion for summary judgment, are as follows:

On December 13, 2016, the Dean of Students at East St. Louis Senior High School contacted Officer Luther Woods of the East St. Louis Police Department regarding two individuals in a stolen

Taurus, and possibly in possession of a weapon. As a result, Officer Woods notified the police dispatcher of this information, and Officer Woods physically reported to the High School. When Officer Woods arrived at the High School, the Taurus was not there. Eventually, Officer Woods saw the Taurus when he pulled his police vehicle around to the back of the High School. Herrod was driving the Taurus, and Johnson was a passenger. Officer Woods and Officer Cantrell Patterson attempted to block the Taurus' exit path, but were unsuccessful as Herrod drove away from the High School. Defendants pursued Herrod and Johnson from the High School.

While fleeing, the Taurus struck two pedestrian vehicles near the intersection of Collinsville Avenue and Martin Luther King Drive in East St. Louis, Illinois. The Taurus made a wide right turn and struck an oncoming eastbound car, head on. After the Taurus struck that vehicle head-on, it then went into reverse and struck another vehicle within the same intersection.

After the second collision the Taurus came to rest. In response, Officer Woods exited his police vehicle and drew his gun. At some point when the Taurus came to a stop, Johnson exited the car, and eventually jumped back in. Following the second collision, the Taurus began to come at Officer Woods who was still on foot. Officer Woods fired his weapon at the Taurus.

Then, the Taurus fled the scene of the accidents, and the pursuit continued over the Martin Luther King Bridge and into the State of Missouri. Officer Woods discontinued his involvement in the pursuit after the Taurus sped off. Officer Woods never left the State of Illinois and he did not further participate in the chase of the Taurus.

Before the Taurus entered Missouri, the Police's Shift Commander, Donald Watson, ordered the pursuit be terminated. However, within a minute or two, the Police's Chief Hubbard reinstated the pursuit. The Officers drove over the speed limit and did not obey traffic control devices. Ultimately, the Taurus crashed into a tractor trailer in the City of St. Louis, Missouri. No East St. Louis Police vehicle was involved in any collision in either Illinois or Missouri.

At the hearing, the parties argued facts which were not included in the summary judgment record, including details related to the duration or speed of the chase which occurred in Missouri, the Officers' proximity to the final collision, and whether the Officers were escorted by or working in conjunction with any Missouri public entity at any time prior to the final collision. However, facts come into a summary judgment record only via Rule 74.04(c)'s numbered-paragraphs-and-responses framework. *Green v. Fotoohigham*, 606 S.W.3d 113, 114 (Mo. banc 2020). Courts determine

and review summary judgment based on that Rule 74.04(c) record, not the whole trial court record. *Id.*

Analysis

"To sue for negligence, the plaintiff must prove (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; and (3) the defendant's breach was the proximate cause of the plaintiff's injury." *Dilley v. Valentine*, 401 S.W.3d 544, 548 (Mo. App. W.D. 2013), citing *Stanley v. City of Independence*, 995 S.W.2d 485, 487 (Mo. banc 1999).

A claim of recklessness involves an aggravated form of negligence. *Id.* at 551. "Reckless conduct may be negligent in that it is unreasonable but it is and must be something more than unreasonable, it must contain a risk of harm to others in excess of that necessary to make the conduct unreasonable and therefore, negligent." *Dilley v. Valentine*, 401 S.W.3d at 550, quoting 2 *Restatement, Torts*, p. 1294. "Liability for reckless conduct arises when an actor intentionally acts or fails to do an act that it was his or her duty to do, knowing or having reason to know of facts that would lead a reasonable person to realize that the conduct involved a high degree of probability that substantial harm would result." *Fowler v. Phillips*, 504 S.W.3d 107, 111 (Mo. App. E.D. 2016).

Defendants argue that they are entitled to summary judgment because there are no material facts, in controversy, that Officers were not the proximate cause of the Plaintiffs' injuries. Defendants rely on case law and the legal standard set therein involving police chases in Missouri, including *Stanley v. City of Independence*, 995 S.W.2d 485, 488 (Mo. banc 1999), *Dilley v. Valentine*, 401 S.W.3d 544 (Mo. App. W.D. 2013), *Frazier v. City of Kansas City*, 467 S.W.2d 327 (Mo. App. W.D. 2015), *Throneberry v. Mo. State Highway Patrol*, 526 S.W.3d 198 (Mo. App. W.D. 2017), *Harris v. City of St. Louis*, 658 S.W.3d 49 (Mo. App. E.D. 2022). All of those cases involved a police pursuit that occurred within the geographical boundaries of Missouri and Missouri public entities.

Here, the undisputed facts reveal Defendants pursued Wooten and Herrod into Missouri to arrest them for possible felonies that could include stealing or possessing the stolen Taurus. Therefore, pursuant to Missouri's Fresh Pursuit statute, §544.150 RSMo, and Illinois' similar statute 725 ILCS 5/107-4, Defendants are afforded police authority in Missouri. The statute states, in relevant portion:

Any member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest such person on the ground that such person is believed to have committed a felony... in

such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal peace unit of this state, to arrest and hold in custody a person on the ground that such person is believed to have committed a felony... in this state; provided, the rights extended by this subsection shall be extended only to those states granting these same rights to peace officers of this state who may be in fresh pursuit of suspected criminals in such reciprocating states.

Section 544.155.1 RSMo.

Additionally, Wooten's Petition and Herrod's Counter-Claim allege Defendants are the proximate cause of their injuries. Therefore the court's guidance on causation in *Stanley*, *Dilley*, *Frazier*, *Throneberry*, and *Harris* is relevant for this Court's review as well.

To determine whether Defendants' conduct was proximate cause for the collision, the court must look to the particular facts in the case, but the "proximate cause cannot be based on pure speculation and conjecture." *Throneberry v. Missouri State Highway Patrol*, 526 S.W.3d at 209, citing *Stanley v. City of Independence*, 995 S.W.2d at 488. "The general test for proximate cause is whether an injury is the natural and probable consequence of the defendant's negligence." *Stanley* at 488.

The undisputed material facts indicate that none of the Defendants were involved in the final collision. There are no other material facts, disputed or undisputed, related to the final collision which caused Herrod's injuries and Johnson's death.

Plaintiffs expert, Charles Drago, offered his opinion that he believes more likely than not that the collision would not have occurred if the Defendants had terminated the pursuit before they entered into Missouri, because Herrod would have stopped driving recklessly before the crash site. See Plaintiffs' Exhibit 11 Drago Depo.

Missouri courts have consistently held that "an expert's opinion must be founded on substantial information, not mere conjecture or speculation, and there must be a rational basis for the opinion." *Doe v. McFarlane*, 207 S.W.3d 52, 62 (Mo. App. E.D. 2006). "An expert's opinion must have a substantial basis in facts actually established." *Bilderback v. Skil Corp.*, 856 S.W.2d 73, 75 (Mo. App. E.D. 1993). "When a party relies on expert testimony to provide evidence as to causation when there are two or more possible causes, that testimony must be given to a reasonable degree of certainty." *Portis v. Greenhaw*, 38 S.W.3d 436, 441 (Mo. App. W.D. 2001). "When an expert merely testifies that a given action or failure to act 'might' or 'could have' yielded a given result, though other causes are possible, such testimony is devoid of evidentiary value." *Id.* In his deposition, Mr. Drago opined that Herrod "would have slowed down or stopped... if the police officers had terminated that pursuit." Mr. Drago admitted that he had no knowledge of the speed of the vehicle at the time of the

collision. This Court finds Mr. Drago's opinion on causation of the collision is based solely on conjecture and speculation.

"Whether proximate cause exists usually raises a jury question." *Tompkins v. Cervantes*, 917 S.W.2d 186, 190 (Mo. App. E.D. 1996). "However, a court properly interpose its judgment in this determination when the evidence reveals the existence of an intervening cause which eclipses the role the defendant's conduct played in the plaintiff's injury." *Id.* When an intervening or superseding cause, unrelated to the defendant's conduct, causes the injury, a negligence action does not exist against the defendant, even though the defendant's conduct brought about the state of affairs into existence. *Tompkins v. Cervantes*, 917 S.W.2d at 191. "The general test for proximate cause is whether an injury is the natural and probable consequence of the defendant's negligence." *Moody v. Kan. City Bd. of Police Comm'rs*, 539 S.W.3d 784, 791 (Mo. App. W.D. 2017). "Each case is decided on its own facts, . . . and proximate cause cannot be based on pure speculation and conjecture." *Id.*, citing *Stanley v. City of Indep.*, 995 S.W.2d at 488.

The undisputed facts reveal that Johnson's death and Herrod's injuries were caused by the collision with the tractor trailer. The undisputed facts reveal Defendants' vehicles were not involved with that collision. Plaintiff offered Mr. Drago's opinion that if

Defendants had ceased pursuing the Taurus in Illinois, Herrod would have eventually stopped recklessly driving and the collision with the tractor trailer would have never occurred. However, there are no facts in evidence to lead this Court to that conclusion beyond mere speculation of what could have potentially occurred if, at some undetermined time, Defendants stopped pursuing the Taurus. This Court finds Mr. Drago's testimony and the facts he relied upon, to be based solely on conjecture and speculation which is not credible or material in this matter. The evidence viewed in the light most favorable to Plaintiffs, fails to reveal any genuine issue of material fact exist that Defendant proximately caused Plaintiffs' injuries. Therefore, Defendants are entitled to summary judgment.

Finally, for the foregoing ruling, the Police's motion to strike Plaintiff's expert, Charles Drago is denied as moot.

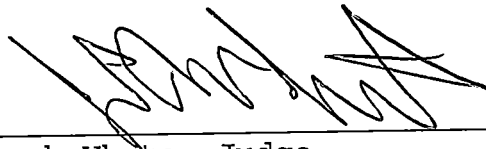
THEREFORE, it is Ordered and Decreed, for the reasons stated herein, that Defendants/Cross-Claim Defendants City of East St. Louis and East St. Louis Police Department's Alternative Joint Motion for Summary Judgment on the Claim of Plaintiff Jamecia Wooten and Cross-Claim Plaintiff Jared Herrod is GRANTED.

Summary Judgment is entered in favor of Defendants/Cross-Claim Defendants City of East St. Louis and East St. Louis Police

Department for Plaintiff Jamecia Wooten's Petition at Count I, and Defendant/Cross-Claim Plaintiff Jared Herrod's Counter-Claim.

It is also Ordered and Decreed that Defendants/Cross-Claim Defendants City of East St. Louis and East St. Louis Police Department's Motion to Strike Plaintiff's Expert Charles Drago is DENIED AS MOOT.

SO ORDERED:



Joseph Whyte, Judge

Dated: October 27, 2023.