

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ROXIE G. DARLING,	:	APPEAL NO. C-130009
	:	TRIAL NO. A-1201203
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF CINCINNATI,	:	
	:	
and	:	
	:	
ROBERT L. GRISBY,	:	
	:	
Defendants-Appellees,	:	
	:	
and	:	
	:	
UNITED HEALTH CARE INSURANCE	:	
COMPANY OF OHIO,	:	
	:	
STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE	:	
COMPANY,	:	
	:	
and	:	
	:	
AETNA DISABILITY,	:	
	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In two assignments of error, plaintiff-appellant Roxie G. Darling claims that the trial court erred when it granted the motion for summary judgment filed by defendants-appellees city of Cincinnati and Robert L. Grisby. We affirm.

Darling filed suit seeking to recover damages for injuries she suffered as a result of an automobile accident. On the date of the accident, Grisby, who was employed by the city of Cincinnati as a police officer, heard a radio call asking for

assistance that had been issued by plain-clothes officers. Grisby left his district and proceeded to answer the call. Grisby was traveling at a high rate of speed, he had his emergency lights activated, and he pulsed his sirens as he approached intersections. As he neared his fellow officers, he noticed Darling emerge from a driveway in front of him. He swerved in an attempt to avoid a collision, but was unsuccessful.

After Darling filed suit, the city and Grisby filed a motion for summary judgment claiming that they were entitled to immunity pursuant to R.C. Chapter 2744. The trial court agreed and granted the motion.

If an employee of a political subdivision is acting within the scope of his employment, he is entitled to immunity unless he acted in a wanton or reckless manner. R.C. 2744.03(A)(6)(b). Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is great probability that harm will result. *Anderson v. City of Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, 983 N.E.2d 266, ¶ 33, citing *Hawkins v. Ivy*, 50 Ohio St.2d 114, 117-118, 363 N.E.2d 367 (1977). Reckless conduct is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct. *Anderson* at ¶ 34, citing *Thompson v. McNeill*, 53 Ohio St.3d 102, 104-105, 559 N.E.2d 705 (1990).

As to the immunity of the city, immunity attaches for police officers responding to an emergency call unless the operation of the vehicle constituted willful or wanton misconduct. R.C. 2744.02(B)(1)(a). Willful misconduct implies an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury. *Anderson* at ¶ 32, citing *Tighe v. Diamond*, 149 Ohio St. 520, 527, 80 N.E.2d 122 (1948).

There is no dispute that the officer was responding to an emergency call, that he had activated his emergency lights, and that he was using his siren when approaching

intersections. The weather was slightly rainy and traffic was light. Other vehicles were able to see Grisby's vehicle and move out of the way.

The facts in this case are very close to those in *Whitley v. Progressive Preferred Ins. Co.*, 1st Dist. Hamilton No. C-090284, 2010-Ohio-356. In that case, a deputy was responding to an emergency call, entered a blind intersection, and was struck by a motorcycle that had the right-of-way. He did not have his siren on. There was a dispute over whether he had his emergency lights activated, so it was presumed that they were not. In that case, this court found that such "human error" might mean negligence, but it did not constitute willful or wanton misconduct.

This case is also similar to *Herweh v. Bailey*, 1st Dist. Hamilton No. C-960177, 1996 Ohio App. LEXIS 4621 (Oct. 23, 1996). In that case, a police officer had been involved in an accident at an intersection where he had proceeded through a red light, without activating the siren on his cruiser. But the cruiser's emergency lights were on, and the officer had slowed the cruiser and had brought it to a stop. In that case, this court concluded that such conduct did not rise above the level of negligence.

In this case, the officer's conduct likewise did not rise above the level of negligence. Grisby had activated his emergency lights. Unlike the officer in *Herweh*, Grisby also activated his siren when approaching intersections. Road and traffic conditions were such that other vehicles were able to see him and move out of his way. Darling entered the roadway from a driveway, not an intersection, in such a way that Grisby was unable to avoid a collision.

Having reviewed the record, we conclude that the officer's conduct meets neither the wanton or reckless standard of R.C. 2744.03(A)(6)(b) nor the willful or wanton misconduct standard of R.C. 2744.02(B)(1)(a). The trial court properly granted summary judgment in favor of Grisby and the city. We overrule Darling's two assignments of error, and affirm the judgment of the trial court.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on September 6, 2013
per order of the court _____.
Presiding Judge

