IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Younis Younis, Plaintiff, v. Emilio Mendez, individually and as an agent of Cook County and Cook County Highway Department; Cook County; Cook County Highway Department, Defendants.	)	No. 20 L 394

MEMORANDUM OPINION AND ORDER

The record supporting a summary judgment motion in a negligence case must contain evidence establishing the plaintiff's inability to plead essential elements of duty, breach, and proximate cause. The evidentiary record must similarly support claims of statutory immunity. Here, neither the law nor the facts support the defendants' arguments for summary judgment; therefore, the defendants' summary judgment motion must be denied.

Facts

On February 1, 2019, Younis Younis exited the driveway of a gas station at the intersection of South Central Avenue and West 87th Street. Younis crossed over several lanes of traffic to position his car in the right lane of northbound South Central Avenue to turn eastbound onto West 87th Street. Younis then came to a stop at a red light behind a car operated by Marek Mietus, who was taking his children to school. At the same time, Emilio Mendez, a Cook County Department of Transportation and Highways employee, was operating a Cook County snowplow heading north on South Central Avenue, removing snow and spreading salt. Although it was not snowing at the time, some snow and ice remained on the street from a recent snowfall. While Younis waited at the red light, Mendez's snowplow struck Younis's vehicle and pushed it into Mietus's vehicle. As a result, Younis allegedly suffered disc herniation, pain, and radiculopathy, requiring subsequent medical treatment and future surgical intervention.

Younis filed a lawsuit against Mendez and the other defendants. On April 10, 2022, the filed a joint answer and the case proceeded to discovery. The parties deposed Younis, Mendez, and Mietus. On March 30, 2022, the defendants filed

their summary judgment motion, which included an affidavit from John Yonan, the former Superintendent of the Cook County Department of Transportation and Highways. In his affidavit, Yonan stated that Mendez tested negative for both controlled substances and alcohol after the accident, was not impaired at the time, and was travelling at 19 miles per hour at the time of the collision. Younis moved to strike this exhibit.

Younis testified in his deposition that Mendez collided with his car 10 to 15 seconds after he came to a stop behind Mietus. Mietus testified that the collision occurred nine to 12 seconds after Younis had stopped. Younis additionally testified that there were very few cars on South Central Avenue at the time, although West 87th Street was "very busy." Mietus additionally testified that Younis was "pretty much straight" behind Mietus's car when the collision occurred, though the back left of Younis's car may have been on or just over the lane line for the forward lane and that Mendez did not change lanes before colliding with Younis.

For his part, Mendez testified that he was driving in the left lane prior to Younis turning onto South Central Avenue, and that Mendez changed lanes after Younis had turned so as to avoid a collision, but Younis continue into Mendez's path. Mendez's account suggests that there was very little time between Younis turning onto South Central Avenue and the collision. Mendez also testified that the snowplow weighed between 10,000 and 59,000 pounds and that the speed limit on South Central Avenue was 30 miles per hour.

Analysis

The defendants bring their summary judgment motion pursuant to the Code of Civil Procedure. 735 ILCS 5/2-1005. Summary judgment is authorized "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. A defendant moving for summary judgment may disprove a plaintiff's case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called "traditional test." *See Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

Regardless of the approach, if the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* Summary judgment may be granted only if the record shows that the moving party's right to relief is clear and free from doubt. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

The defendants argue that Mendez was permitted to disregard traffic laws pursuant to Illinois Vehicle Code section 11-205. The relevant portions of section 11-205 provide that:

> (a) The provisions of this Chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by [any county], except as provided in this Section and subject to such specific exceptions as set forth in this Chapter with reference to authorized emergency vehicles.
> (b) The driver of an authorized emergency vehicle, when responding to an emergency call . . . may exercise the privileges set forth in this Section, but subject to the conditions herein stated.
> (c) The driver of an authorized emergency vehicle may:
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> 2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be required and necessary for safe operation;
> 3. Exceed the maximum speed limits so long as he does not endanger life or property;
> 4. Disregard regulations governing direction of movement or turning in specified directions.

* * *

> (e) The foregoing provisions do not relieve the driver of an authorized emergency vehicle from the duty of driving with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of his reckless disregard for the safety of others.
> (f) Unless specifically made applicable, the provisions of this Chapter . . . shall not apply to persons, motor vehicles and equipment while actually engaged in work upon a highway[.]

625 ILCS 5/11-205. The defendants cite *Creamer v. Rude*, 37 Ill. App. 2d 148, 158 (4th Dist. 1962), and *Townsend v. Gaydosh*, 197 Ill. App. 3d 339, 343-44 (4th Dist. 1990), to argue that Mendez cannot be liable for the collision because he was "actually engaged in work upon a highway." *See* 625 ILCS 5/11-205(f). Neither of these cases supports defendants' argument. In *Creamer*, the plaintiff sued based on a collision with a highway maintenance truck that was plowing snow and spreading cinder. 37 Ill. App. 2d at 151-52. The appellate court reversed judgment for the plaintiff, because the trial court had failed to instruct the jury that the truck driver had not violated any traffic laws because he was "actually engaged in work upon the surface of a highway." *Id.* at 156-57. The court reasoned, "Had the jury been told that the defendant was not violating the law by standing and stopping upon the highway, a very different result might have been reached." *Id.* at 157-58. In other words, the truck driver could not be found negligent specifically on account of his alleged failure to abide by traffic laws because there was no such failure for someone engaged in work on the highway. Contrary to the defendants' argument, the court did not hold more broadly that the truck driver could not be held negligent at all. In fact, the court repeatedly emphasized quite the opposite conclusion:

> Suffice it to say that we conclude from these cases that the holding of the trial judge permitting the plaintiffs to go to the jury against this State employee on ordinary negligence grounds alone represents the present view in Illinois and was correct. . . . There is no sound judicial reason why a governmental highway employee should be expected to act less as an ordinary prudent man than a person not so employed. The rule of *ordinary care under similar circumstances* is one which permits due consideration of the fact that defendant, here, may have been carrying out the duties of his employment at the time, and that snow plowing and removing stalled cars is of vital interest to the general welfare. . . . The position we take on the jury's instruction does not offend our holding on the applicability of ordinary negligence rules to the defendant's actions here, nor prevent a possible recovery.

Id. at 154-55, 158 (emphasis in original).

Townsend is similarly unavailing. In that case, the appellate court affirmed the dismissal of negligence claims made against a highway maintenance driver because the claims were predicated solely on violations of the traffic code that did not apply while the driver was working on the highway. 197 Ill. App. 3d. at 345. Importantly, the *Townsend* plaintiff failed to allege a breach of the duty of ordinary care. *Id.* at 345. Conversely, Younis does allege such a breach here and, in fact, does not allege any traffic code violations. Thus, whether Mendez was engaged in work on a highway at the time of the collision is irrelevant.

The defendants cite *Creamer* and *Townsend* additionally to argue that Mendez's snowplow was an authorized emergency vehicle subject to the privileges of section 5/11-205. These cases say nothing of the sort. Not once do *Creamer* or *Townsend* attempt to construe statutory provisions concerning authorized emergency vehicles but, instead, quite clearly limit the scope of each defendant-driver's privileges to those granted to persons engaged in work on a highway. *Creamer*, 37 Ill. App. 2d at 155-57; *Townsend*, 197 Ill. App. 3d at 342-44.

Section 1-105 of the Vehicle Code defines an authorized emergency vehicle as follows in pertinent part:

> Emergency vehicles of municipal departments . . . as are designated or authorized by proper local authorities; police vehicles; vehicles of the fire department; vehicles of a HazMat or technical rescue team[;] ambulances; vehicles of the Illinois Department of Corrections; vehicles of the Illinois Department of Juvenile Justice; vehicles of the Illinois Emergency Management Agency; vehicles of the Office of the Illinois State Fire Marshal; mine rescue and explosives emergency response vehicles of the Department of Natural Resources; vehicles of the Illinois Department of Public Health; vehicles of the Illinois State Toll Highway Authority with a gross vehicle weight rating of 9,000 pounds or more and those identified as Highway Emergency Lane Patrol; vehicles of the Illinois Department of Transportation identified as Emergency Traffic Patrol; and vehicles of a municipal or county emergency services and disaster agency, as defined by the Illinois Emergency Management Agency Act [20 ILCS 3305/01 *et seq.*].

625 ILCS 5/1-105. Plainly, this list does not include snowplows, and the Illinois Emergency Management Agency Act does not reference snowplows, much less designate them as authorized emergency vehicles. The defendants have also offered no valid support for considering them such. Further, the defendants ignore that section 11-205 grants privileges to the drivers of authorized emergency vehicles only "when responding to an emergency call." 625 ILCS 5/11-205(b). The defendants do not claim that Mendez was responding to an emergency call, likely because they could not reasonably do so under the circumstances, as the facts indicate that it was not actively snowing and the streets were clear enough for schools to remain open

and for the traffic on West 87th Street to be "very busy." Even police cars—which, unlike snowplows, are listed under the definition of authorized emergency vehicles—are not entitled to the privileges of section 5/11-205(c) if they are on routine patrol. *See Perrine v. Charles T. Bisch & Son*, 409 Ill. 175, 178 (1951). For these reasons, among others, this court cannot accept the defendants' argument that a snowplow is an authorized emergency vehicle.

Even if Mendez's snowplow were an emergency vehicle, the relevant Vehicle Code provisions "do not relieve the driver of an authorized emergency vehicle from the duty of driving with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of his reckless disregard for the safety of others." 625 ILCS 5/11-205(e). The statutory privilege to proceed through a traffic signal is subject to the condition that drivers "slow[] down as may be required and necessary for safe operation[.]" 625 ILCS 5/11-205(c)(2). Similarly, the statutory privilege to exceed the speed limit is subject to the condition that drivers "do[] not endanger life or property[.]" 625 ILCS 5/11-205(c)(3). And while the defendants stress that the driver of an authorized emergency vehicle is also entitled to "disregard regulations governing direction of movement or turning in specified directions," that provision cannot be interpreted to conflict with the express conditions of 5/11-205(c)(2)-(3). Here, Younis testified that Mendez collided with his car 10 to 15 seconds after stopping behind Mietus. Mietus largely corroborated Younis's testimony, estimating that the collision occurred nine to 12 seconds after Younis stopped. On these facts, this court cannot conclude that Mendez satisfied any of the relevant conditions that would trigger his supposed privileges under the Vehicle Code.

The defendants additionally argue that Mendez did not breach his generalized duty of care because there is no evidence to show that he violated any traffic laws. This argument misstates the generalized duty of care, which is not limited to compliance with the Vehicle Code. *See Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 19. *See also Widlowski v. Durkee Foods*, 138 Ill. 2d 369, 373 (1990) ("[T]his court has long recognized that 'every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act[.]' . . . Thus, if a course of action creates a foreseeable risk of injury, the individual engaged in that course of action has a duty to protect others from such injury"). To determine whether a defendant owed a duty to a plaintiff, courts analyze the parties' relationship to one another. *See Doe-3 v. McLean Cty. Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 22 (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006)). The "relationship" is "a shorthand description for the analysis of four factors: (1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing the burden on the defendant." *Id.* (citing *Simpkins*, 2012 IL 110662, ¶ 18 (2012)).

If a five-ton snowplow collides with the car, injury to the car's driver is easily foreseeable and highly likely, regardless of whether the driver of the snowplow was obeying the speed limit. The burden of preventing such injury is minimal, particularly if the snowplow driver has at least nine seconds either to stop or change lanes. And the consequence of placing that burden on the defendants is similarly minimal because the burden is consistent with the Vehicle Code and what is expected of all drivers. In sum, this court cannot permit the defendants to claim Mendez was not negligent simply because he complied with traffic regulations.[1] To do so would fly in the face of the Supreme Court's guidance on the generalized duty of care. *See Simpkins*, 2012 IL 110662, ¶ 19.

Finally, the defendants argue they are immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act. Section 2-202 of that act provides that "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct." 745 ILCS 10/2-202. Section 2-109 provides that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109. Accordingly, whether Cook County is liable here turns on whether Mendez is liable, which turns on whether (1) he was "in the execution or enforcement of any law," and (2) his conduct was willful and wanton. *See* 745 ILCS 10/2-202.

The Tort Immunity Act is in derogation of common law and, therefore, must be strictly construed against public entities asserting immunity. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 380 (2003) (citing *Zimmerman for Zimmerman v. Village of Skokie*, 183 Ill. 2d 30, 44 (1998)). Mere performance of a public employee's duties does not constitute "execution or enforcement of any law." *Aikens v. Morris*, 145 Ill. 2d 273, 278 (1991) (citing *Arnolt v. City of Highland Park*, 52 Ill. 2d 27, 33 (1972)). Similarly, the mere fact that a public employee acts pursuant to some legal authorization does not trigger section 2-202 immunity. *Id.* at 285.

Here, the defendants argue that Mendez was executing the law, pointing to the county's requirement to exercise ordinary care to maintain property in reasonably safe conditions under Tort Immunity Act section 3-102(a). This argument does not square with controlling precedent. In *Barnett v. Zion Park District*, the Supreme Court found that lifeguards were not executing or enforcing the law, although the law authorized them to act as lifeguards and imposed regulations on relevant qualifications. 171 Ill. 2d 378, 391 (1996). The defendants here do not even point to regulations similar to the *Barnett* defendant; consequently

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[1] For the same reasons, this court finds it unnecessary to consider Younis's motion to strike defendants' exhibit 6, which is offered merely to prove that Mendez was not impaired and was driving at 19 miles per hour—facts not dispositive of whether Mendez breached his generalized duty of care.

Barnett's reasoning applies *a fortiori*. *See id.* Our supreme court has also held that on-duty police officers transporting prisoners and detainees are not enforcing or executing any laws, although the law authorizes—and their employment requires—them to do so. *Id.* at 286 (citing *Anderson v. City of Chicago*, 29 Ill. App. 3d 971, 977 (1st Dist. 1975)). If on-duty police officers, whose job description literally entails law enforcement, cannot claim to be enforcing or executing the law while transporting prisoners and detainees, it would be absurd to conclude that Mendez was enforcing or executing the law by plowing snow and spreading salt.

Even if this court were to assume that 2-202 immunity did apply in this case, that immunity expressly does not reach willful and wanton acts or omissions. 745 ILCS 10/2-202. An act is willful and wanton if it shows "utter indifference or conscious disregard for the safety of others or their property." *Sparks v. Starks*, 367 Ill. App. 3d 834, 837 (1st Dist. 2006). The record contains facts sufficient for a reasonable jury to find that Mendez showed such utter indifference or conscious disregard for Younis's safety. Both Younis and Mietus testified that Mendez had at least nine seconds to stop before changing lanes. The record permits the reasonable inference that the light on South Central Avenue was red the entire time, and that Mendez had another lane open to him. A jury could reasonably find that Mendez's failure to maneuver the five-ton snowplow safely under these circumstances showed utter indifference for the safety of others or their property. Moreover, a jury could find conscious disregard given Mendez's own testimony that commercial drivers license holders, like he, need to be especially careful when operating heavy vehicles.

As a final matter, Younis does not contest the defendants' assertion that the Cook County Highway Department is not a suable entity.

Conclusion

For the foregoing reasons, it is ordered that:

1. Younis's motion to strike the defendants' exhibit six is stricken;
2. The defendants' summary judgment motion is denied; and
3. The Cook County Highway Department is dismissed from the case with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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