IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DONNA WOOLLACOTT, *et al.*,	)	CASE NO. CV 12 783243
	)	
Plaintiffs,	)	
	)	JUDGE BRENDAN J. SHEEHAN
v.	)	
	)	
BRIAN ANDREAS, *et al.*,	)	
	)	**OPINION AND JUDGMENT**
Defendants.	)	**ENTRY**
	)	

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Defendant Vicky Anderson's Motion for Summary Judgment. The issues have been fully briefed to the Court.

Plaintiff Donna Woollacott filed this action in her individual capacity and as the Administrator for the Estate of John J. Woollacott. In her Amended Complaint, Plaintiff alleges that on May 23, 2010 at 1:48 a.m., she called 911 because her husband, John J. Woollacott, had difficulty breathing. Plaintiff's 911 call was received by Brian Andreas ("Andreas"), a dispatcher for the City of Maple Heights ("Maple Heights") who was being trained by his supervisor, Defendant Vicky Anderson ("Anderson"). Plaintiff alleges that Andreas mishandled the emergency call by routing the request for mutual aid to the more distant Warrensville Heights Fire Department rather than the closer Garfield Heights Fire Department. Plaintiff maintains that Andreas misdirected the mutual aid call in reliance on incorrect information provided to him by his supervisor[1].

[1] Plaintiff also brought claims against Brian Andreas and James Castelucci but voluntarily dismissed those claims on March 13, 2013.

Plaintiff called the dispatcher again at 1:54 a.m. when an ambulance had not yet arrived. Plaintiff alleges that Andreas and Anderson then called Maple Heights Fire Department Station 2 to request an ambulance response to Plaintiff's residence. Andreas and Anderson also called the Garfield Heights Fire Department. Plaintiff alleges that the failure to request an ambulance immediately from the closer city led to a delayed response time. When ambulance from Maple Heights Fire Department Station 2 arrived at Plaintiff's residence at 1:58 a.m., Mr. Woollacott was nonresponsive and was pronounced dead at Marymount Hospital at 2:52 a.m.

Plaintiff has alleged three remaining causes of action: wrongful death against Anderson for the "willful, wanton and/or reckless manner in [her] handling of Plaintiff's 9-1-1 call for emergency rescue services", emotional distress, and loss of consortium.

Defendant Anderson seeks summary judgment based on the doctrine of sovereign immunity.

II. LAW AND ANALYSIS.

A. Standard of Review for Summary Judgment.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving

party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc*, 8th Dist. No. 70175, 1997 WL 578940, 2 (1997), *citing Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

B. Sovereign Immunity.

Plaintiffs seek to impose liability on Defendant Anderson, an employee of Maple Heights. As an employee of a political subdivision, Defendant Anderson is personally immune from liability unless (a) the alleged acts or omissions were manifestly outside the scope of her employment or official responsibilities; (b) the alleged acts or omissions were with malicious purpose, bad faith, or wantonly or recklessly; or (c) liability is expressly imposed on the employee by a section of the Revised Code. R.C. 2744.03(A)(6).

It is undisputed that Defendant Anderson was acting within the scope of her employment when directing the response to Plaintiff's emergency call. Thus, the critical issue is whether the alleged acts or omissions were "with malicious purpose, bad faith, or wantonly or recklessly." Allegations of negligence are insufficient to overcome the immunity granted to an employee of a political subdivision who acts within his or her official duties. Rather, as the Ohio Supreme Court has stated:

> We note that showing recklessness is subject to a high standard. "This court has defined the term 'reckless' to mean that the conduct was committed '"knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent."'" [Internal citations omitted.]

> "'[M]ere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor.' Such perversity must be under such conditions that the actor must be conscious that his conduct will in all probability result in injury." *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St. 3d 351, 356, 1994 Ohio 368, 639 N.E.2d 31, quoting *Roszman v. Sammett* (1971), 26 Ohio St.2d 94, 96-97, 55 O.O.2d 165, 269 N.E.2d 420.

Rankin v. Cuyahoga County Dep't of Children & Family Servs., 118 Ohio St. 3d 392, 398, 2008 Ohio 2567, 889 N.E.2d 521. See also *Sheffey v. Flowers*, 2013 Ohio 1349, P13-P14 (8th Dist. Apr. 4, 2013).

Plaintiff has alleged the following acts as Defendant Anderson's wrongful conduct:

1. Anderson failed to follow Maple Heights Fire Department protocol to dispatch a first responder immediately upon receipt of the emergency call;
2. In response to the emergency call, Defendant Anderson retrieved an email containing dispatch protocol rather than immediately directing a first responder to the site;
3. Defendant Anderson instructed her trainee to call the wrong number for mutual aid;
4. Defendant Anderson stopped her trainee from obtaining the correct number for mutual aid from readily accessible reference materials and failed to verify that the correct number for aid was called; and
5. Defendant Anderson failed to consult the Mutual Aid Box Alarm System as required by Maple Heights dispatch protocol.

Defendant admits that Maple Heights dispatch protocol was violated but maintains that the violation does not rise to the level of recklessness necessary to impose liability. In her deposition, she testified:

> Q: Okay. With respect to medical calls, would you agree with me that your role as a dispatcher on a medical call is essential to helping citizens with those medical concerns avoid serious harm?
>
> A: To avoid serious harm.
>
> Q: Yeah, or death?
>
> A: Yes.

> Q: And what I mean is, it's following the procedures and protocols that you're trained and instructed upon is essential to make sure that people don't suffer serious harm or death, correct?
>
> A: Correct, yes.

Anderson Deposition p. 23, l. 23-24, p. 24, l. 1-11.

Relying on *Anderson v. City of Massillon*, 134 Ohio St. 3d 380, 2012 Ohio 5711, 983 N.E.2d 266, and *O'Toole v. Denihan*, 118 Ohio St. 3d 374, 2008 Ohio 2547, 889 N.E.2d 505, Defendant argues that her knowledge that procedures and protocols are essential to ensure that people do not suffer serious harm or death and her subsequent failure to follow protocols are insufficient to establish recklessness. In *Anderson,* the Ohio Supreme Court stated:

> [I]tis well established that the violation of a statute, ordinance, or departmental policy enacted for the safety of the public is not *per se* willful, wanton, or reckless conduct, but may be relevant to determining the culpability of a course of conduct. See *Higbee Co. v. Jackson*, 101 Ohio St. 75, 90, 128 N.E. 61 (1920); *Payne v. Vance*, 103 Ohio St. 59, 77, 133 N.E. 85, 19 Ohio L. Rep. 171 (1921); *Boyd v. Natl. RR. Passenger Corp.*, 446 Mass. 540, 549, 845 N.E.2d 356 (2006); *Wise v. Broadway*, 315 S.C. 273, 276, 433 S.E.2d 857 (1993); *Whitley v. Progressive Preferred Ins. Co.*, 1st Dist. No. C-090240, 2010 Ohio 356, ¶ 16; 2 Restatement of the Law 2d, Torts, Section 500, Comment e (1965).
>
> However, as the Restatement explains,
>
> > In order that the breach of [a] statute constitute reckless disregard for the safety of those for whose protection it is enacted, the statute must not only be intentionally violated, but the precautions required must be such that their omission will be recognized as involving a high degree of probability that serious harm will result.
>
> 2 Restatement of the Law 2d, Torts (1965) 587, Section 500, cmt. e. Thus, as we concluded in *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008 Ohio 2574, 889 N.E.2d 505, "[w]ithout evidence of an accompanying knowledge that the violations 'will in all probability result in injury,' *Fabrey [v. McDonald Village Police Dept.*], 70 Ohio St.3d [351] at 356, 639 N.E.2d 31, 1994 Ohio 368 [1994]

evidence that policies have been violated demonstrates negligence at best." Id. at ¶ 92.

Anderson, supra, at 388-389.

While this Court is aware that first responders cannot and should not be held to a level of perfection, this case does not present a simple set of facts where a single instance of negligence occurred. Rather, the course of conduct involves numerous acts, many of which were questionable at best. Defendant's knowledge that serious injury or death could result from the failure to follow established procedures and protocols taken with the numerous apparent missteps and delays precludes this Court from finding a lack of recklessness as a matter of law. The series of apparent missteps and delays gives rise to legitimate and genuine issues of material fact that should be determined by a jury after thorough review of the evidence and testimony concerning the disputed facts at issue.

ACCORDINGLY, DEFENDANT VICKY ANDERSON'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

JUDGE BRENDAN J. SHEEHAN

Dated: 7/23/13

RECEIVED FOR FILING

JUL 24 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By Deputy

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 23rd day of July, 2013:

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