[Cite as *Zink v. Hudson*, 2015-Ohio-2937.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

CATHERINE ZINK, et al.	C.A. No. 27419
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
CITY OF HUDSON, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. CV 2012-09-5409

DECISION AND JOURNAL ENTRY

Dated: July 22, 2015

MOORE, Judge.

{¶1} Plaintiffs-Appellants Catherine Zink and Steven Zink appeal from the judgment of the Summit County Court of Common Pleas granting summary judgment to the City of Hudson ("the City").[1] For the reasons set forth below, we affirm.

I.

{¶2} On October 8, 2011, Mrs. Zink had shellfish for dinner and began to feel ill on the way home. She went to bed but woke up and began vomiting and experiencing diarrhea. She tried to go back to sleep but kept vomiting. Mrs. Zink began feeling weak. Her husband, Mr. Zink, called 911.

[1] Summary judgment was also granted to Bruce Graham, the head of Hudson Emergency Medical Service ("EMS") and Chris Methvin, the EMS training coordinator for Hudson EMS. However, on appeal, the Zinks have not challenged the award of summary judgment to these individuals.

{¶3} Dispatch informed Hudson EMS of Mrs. Zink's symptoms and of the possibility that Mrs. Zink was experiencing an allergic reaction to shellfish. Elizabeth Goforth, who was a paramedic, two EMTs, and a student arrived at the Zink residence. Mr. Zink informed them that Mrs. Zink had previously had a reaction to shellfish.

{¶4} After seeing Mrs. Zink, Ms. Goforth requested the assistance of a second EMS unit as she was not sure that she and her colleagues would be able to get Mrs. Zink downstairs to the ambulance, in part, because Mrs. Zink was in worse condition than Ms. Goforth anticipated. After placing Mrs. Zink in the ambulance, Ms. Goforth asked Heather Heller, who arrived in the second unit and was also a paramedic, to ride with Ms. Goforth to the hospital.

{¶5} During the drive to the Cleveland Clinic Twinsburg facility, Ms. Heller was responsible for ensuring that Mrs. Zink's airway was maintained. Ms. Goforth was responsible for administering medication to Mrs. Zink. Ms. Goforth gave Mrs. Zink Benadryl, a steroid, and an anti-nausea drug. Additionally, Ms. Goforth testified that she prepared epinephrine but did not initially give it. Ms. Goforth stated that, because Mrs. Zink lacked some of the signs of anaphylaxis, Ms. Goforth could not administer epinephrine without approval. Epinephrine is delivered subcutaneously in cases of anaphylaxis in a 1:1000 preparation (that is, one milligram of epinephrine in one milliliter, or one gram of epinephrine in 1,000 milliliters). It is delivered intravenously in cases of cardiac arrest in a 1:10000 preparation (that is, one milligram of epinephrine in ten milliliters, or one gram in 10,000 milliliters). Thus, .5 ml of a 1:1000 solution will contain .5 mg of epinephrine; whereas .5 ml of a 1:10000 solution will contain .05 mg of epinephrine.

{¶6} When they reached the hospital parking lot, Ms. Goforth received authorization to administer .3-.5 mg of 1:1000 epinephrine. While the route of administration was not specified,

Ms. Goforth knew that, because this was a suspected case of anaphylaxis, the epinephrine should be given subcutaneously, not intravenously. Despite this knowledge, Ms. Goforth testified that she gave Mrs. Zink .15 to .2 mg of the epinephrine intravenously without an I.V. drip, but did not give the remainder of the .3 mg she had prepared because they arrived at the hospital. However, Mrs. Zink's hospital records would later indicate that Mrs. Zink received "1:1000 mixture of epinephrine 3 mg IV," and that what she received was an "inadvertently high dose of epinephrine."

{¶7} Upon arrival in the emergency room, Ms. Goforth reported the medications she had given Mrs. Zink, including that she had given epinephrine intravenously. Ms. Goforth, realizing that she told the doctor she administered the drug through the wrong route, then told the doctor she administered it subcutaneously. While walking away, she realized that she had in fact administered it via the wrong route – intravenously – and reported her error to the doctor.

{¶8} Ms. Goforth's error caused Mrs. Zink to experience cardiac problems. Mrs. Zink was transferred to, and admitted at, University Hospital's Ahuja Medical Center. She underwent a cardiac catheterization and was required to take medications following her discharge from the hospital.

{¶9} The Zinks filed a nine-count complaint in September 2012 against the City, William Currin, in his official capacity as the Mayor of Hudson, Bob Carter, in his official capacity as Fire Chief of Hudson, Bruce Graham, in his official capacity as the head of Hudson EMS, Chris Methvin, as EMS Training Coordinator, and John Doe EMS Technicians 1-3. Subsequently, the trial court dismissed Mr. Currin, Mr. Carter, and the John Doe EMS Technicians from the action.

{¶10} The City, Mr. Graham, and Mr. Methvin moved for summary judgment arguing that they were immune from liability as there was no evidence of willful or wanton misconduct. The Zinks responded in opposition and the City, Mr. Graham, and Mr. Methvin filed a reply brief. The trial court found that "[t]he misconduct in this case does not rise to the level of willful or wanton." Therefore, the trial court concluded that the City, Mr. Graham, and Mr. Methvin were immune and granted summary judgment to them.

{¶11} The Zinks have appealed, raising a single assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> THE ADMINISTRATION OF APPROXIMATELY .15-.3 MG OF EPINEPHRINE THROUGH THE WRONG ROUTE AT TEN TIMES THE CORRECT DILUTION AMOUNTS TO WANTON MISCONDUCT THEREFORE SUMMARY JUDGMENT WAS IMPROPERLY GRANTED[.]

{¶12} In their sole assignment of error, the Zinks challenge the trial court's grant of summary judgment to the City. They assert in their assignment of error that Ms. Goforth's administration of .15-.3 mg of epinephrine at the incorrect dilution and via the wrong route creates a genuine issue of material fact with respect to whether her conduct was wanton. Therefore, they argue that the City was not entitled to the benefit of immunity and summary judgment was improperly granted. We do not agree.

{¶13} Pursuant to Civ.R. 56(C), summary judgment is proper only if:

> (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977). The summary judgment movant bears the initial burden of informing the trial court of the basis for the motion and pointing to

parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93 (1996). "If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied." *Id*. at 293. Only if the moving party fulfills his or her initial burden does the burden shift to the nonmoving party to prove that a genuine issue of material fact exists. *Id*.

{¶14} "R.C. 2744.02(A)(1) states that *except* as provided in division (B), a political subdivision is not liable in damages for injury allegedly caused by an act of an employee of the political subdivision in connection with a governmental or proprietary function." (Emphasis sic.) *Riffle v. Physicians & Surgeons Ambulance Serv., Inc.*, 135 Ohio St.3d 357, 2013-Ohio-989, ¶ 2. "Providing emergency medical services is a governmental function." *Id.*, citing R.C. 2744.01(C)(2)(a).

> Division (B)(5) establishes an exception to immunity when civil liability is expressly imposed upon a political subdivision by the Revised Code, and relevant to this case, R.C. 4765.49(B) provides that a political subdivision is liable for injury arising out of any actions taken by a first responder, EMT-basic, EMT-I, or paramedic when emergency medical services are provided in a manner that constitutes willful or wanton misconduct.

(Emphasis omitted.) *Riffle* at ¶ 2.

{¶15} The City moved for summary judgment arguing that there was no evidence that Ms. Goforth's conduct was wanton or willful. It argued that, while Ms. Goforth did administer .15-.2 mg of epinephrine 1:1000 via the wrong route – intravenously, instead of subcutaneously – at most Ms. Goforth's actions amounted to negligence. The City cited the Zinks' expert report of Dr. Nguyen, which stated that Dr. Nguyen believed Ms. Goforth's conduct was negligent. Additionally, the City stated that, while Dr. Nguyen indicated that Ms. Goforth administered 3mg of epinephrine 1:1000, there was no evidence to support that fact. The City included documentary evidence with its motion, including portions of Mrs. Zink's medical records.

{¶16} The Zinks responded in opposition, arguing that Ms. Goforth gave Mrs. Zink 10x the proper dose via the incorrect route. They also noted that Ms. Goforth was not a very experienced paramedic as compared to Ms. Heller. While Ms. Goforth had been volunteering for Hudson EMS since 2008, she was not hired by Hudson EMS as a paramedic until 2011. Ms. Goforth volunteered for Hudson EMS while she was receiving her EMT basic training and continued to do so when she became a certified paramedic in 2009. Moreover, Ms. Goforth had never, prior to October 8, 2011, administered epinephrine. Ms. Heller, on the other hand, had over ten years of experience as a paramedic and had administered epinephrine before that night. In addition to other materials, the Zinks submitted the letter from Dr. C. Alan Brown, a physician with a cardiovascular medicine practice in California, Dr. Nguyen's expert report, and Dr. Nguyen's affidavit. The Zinks conceded that Ms. Goforth's actions were not willful but argued that an issue of fact remained with respect to whether her conduct was wanton.

{¶17} While portions of Mrs. Zink's medical records and the expert reports that relied on those medical records indicate that she received 3 mg of 1:1000 epinephrine, on appeal, it appears, based upon the wording of their assignment of error, that the Zinks have essentially conceded that Ms. Goforth administered only .15 to .3 mg of epinephrine, as she maintained throughout her testimony. The Zinks assignment of error specifically states that .15 to .3 mg was the amount administered. This Court has stated on numerous occasions that "[a]n appellant's assignment of error provides a roadmap for our review and, as such, directs our analysis of the trial court's judgment[.]" (Internal quotations and citation omitted.) *J.B. v. Harford,* 9th Dist. Summit No. 27231, 2015-Ohio-13, ¶ 36. Accordingly, we will proceed to analyze whether a trier of fact could conclude that Ms. Goforth's intravenous administration of .15 to .3 mg of 1:1000 epinephrine was wanton after viewing the evidence in a light most favorable to the Zinks.

{¶18} "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. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, paragraph three of the syllabus. While it is true that Dr. Nguyen only characterized Ms. Goforth's conduct as negligent in his report, such is a legal conclusion. *See Blair v. Columbus Div. of Fire*, 10th Dist. Franklin No. 10AP-575, 2011-Ohio-3648, ¶ 33. Thus, this Court must look at the underlying *facts* to determine the culpability of Ms. Goforth. *See id.* After independently reviewing the record, we conclude that Ms. Goforth's administration of .15 to .3 mg of 1:1000 epinephrine did not rise to the level of wanton conduct.

{¶19} We note that, unfortunately, the Zinks' brief is somewhat confusing in its use of terminology. While the Zinks maintain that Mrs. Zink essentially received an overdose of epinephrine, they, at the same time, acknowledge that Ms. Goforth administered the appropriate amount and dilution of epinephrine for a subcutaneous administration. There appears to be no dispute that, under the circumstances, Ms. Goforth should have administered the epinephrine subcutaneously, as epinephrine is typically administered intravenously only in cases of cardiac arrest. Accordingly, in light of the argument made, there seems to be agreement that Ms. Goforth administered the appropriate dosage of epinephrine for Mrs. Zink's condition but did so via the wrong route.[2] It appears that the Zinks contend that the "dosage" she was given was inordinately high, not because she was given 3 mg of epinephrine instead of .15 to .3 mg, but

[2] There is a Hudson EMS Protocol in the record that indicates that, in patients over age 50, like Mrs. Zink, the preferred method of epinephrine administration for systemic anaphylaxis is via an I.V. drip infusion. While the route used by Ms. Goforth was intravenous, she did not use a drip which would have allowed for more controlled delivery of the drug. The Zinks have not cited to this evidence in their brief to this Court or argued it is otherwise relevant for purposes of this appeal. In their brief, they maintain that the drug should have been administered subcutaneously.

because Ms. Goforth administered a 1:1000 solution of epinephrine as opposed to the 1:10000 solution that should be used in intravenous administration.

{¶20} While we are not unsympathetic to the Zinks' position, given their argument on appeal, we must conclude that the record does not support that Ms. Goforth "fail[ed] to exercise any care" towards Mrs. Zink. *See Anderson* at paragraph three of the syllabus.

{¶21} When Ms. Goforth arrived at Mrs. Zink's house, she evaluated her and realized her condition was worse than had been anticipated. Thus, she called for another ambulance to provide assistance and asked Ms. Heller, another paramedic, to also ride along with them to the hospital. En route to the hospital, Ms. Heller was responsible for maintaining Mrs. Zink's airway, and Ms. Goforth was responsible for administering medications. As a trained and licensed paramedic, Ms. Goforth possessed the skills and training necessary to administer various drugs, including epinephrine, via different routes, including intravenously. Ms. Goforth administered Benadryl, a steroid, and Zofran to Mrs. Zink while in the ambulance. There are no allegations that Ms. Goforth's administration of those medications was anything other than necessary and appropriate.

{¶22} In addition, Ms. Goforth prepared .3 mg of 1:1000 epinephrine, but did not initially administer it. Because Mrs. Zink lacked some of the symptoms of anaphylaxis, Ms. Goforth was required to seek approval from a doctor first. One of the EMTs in the ambulance called in and received the authorization to give Mrs. Zink .3 to .5 mg of 1:1000 epinephrine. While prior to October 8, 2011, Ms. Goforth had not administered epinephrine to a patient, she nonetheless knew that she was supposed to administer it subcutaneously. Despite this knowledge, Ms. Goforth testified at her deposition that she administered approximately .15 to .2 mg of 1:1000 epinephrine intravenously. Ms. Goforth knew that directly injecting the drug into

a vein causes it to act more quickly than if it is administered subcutaneously. She was also aware that inappropriate administration of epinephrine could result in adverse consequences for the patient.

{¶23} Upon arrival at the hospital, Ms. Goforth initially informed the emergency room physician that she administered the epinephrine intravenously. After realizing what she said and that such would have been the incorrect route, she told the doctor that she administered it subcutaneously. Ms. Goforth walked a short distance away, realized she had made a mistake, and returned to inform the doctor she had in fact administered the epinephrine intravenously.

{¶24} The Zinks argue that there exists a genuine issue of material fact with respect to whether Ms. Goforth acted in a wanton manner based upon the combination of: (1) Ms. Goforth's inexperience in administering epinephrine; (2) her relative inexperience as a paramedic and her failure to ask for help; (3) her failure to have anyone double check the amount of epinephrine or the route of administration prior to administering it; (4) her administration of 1:1000 epinephrine intravenously instead of subcutaneously; (5) her failure to check Mrs. Zink's vitals prior to administering the epinephrine and thereby administering epinephrine when it was not needed; (6) her awareness that giving someone too much epinephrine can have serious consequences; and (7) her reporting the incorrect information to the doctor.

{¶25} As noted above Ms. Goforth was a trained and licensed paramedic who was permitted to administer epinephrine. There is nothing in the record that indicates that she was required, or even expected, to seek assistance or confirmation from another paramedic prior to administering epinephrine. Thus, we fail to see how Ms. Goforth's inexperience and failure to ask for assistance amounts to a complete lack of care on her part. *See Blair,* 2011-Ohio-3648, ¶ 36. The Zinks claim that "[a]ny paramedic who read[] the vitals prior to administering

epinephrine would have seen the vitals improved and at th[at] point the epinephrine was not needed." However, the Zinks have not pointed to anything in the record that would support such a statement. *See* App.R. 16(A)(7). We have discovered no evidence that the administration of epinephrine in general to Mrs. Zink was completely unwarranted under the circumstances. We note that Ms. Goforth refrained from administering the epinephrine until she received approval from the doctor. Additionally, Ms. Goforth administered the concentration of epinephrine ordered by the physician, i.e. 1:1000 epinephrine. Thus, it can only be concluded that she exercised some degree of care. *See Bush v. Community Care Ambulance Network*, 11 Dist. Ashtabula No. 2011-A-0072, 2012-Ohio-4458, ¶ 42 (concluding that the paramedics exercised some care in both recognizing they might need help in transporting a patient and by calling for additional help). Moreover, assuming she administered between .15 and .3 mg of that solution, she administered either slightly less than authorized, or the amount authorized by the physician. Based on the Zinks' argument, the only error Ms. Goforth made was administering the authorized concentration and amount of epinephrine via the wrong route. While such is no doubt a serious mistake, it does not, as a matter of law, rise to the level of wanton conduct, or a failure to exercise any care at all.

{¶26} Finally, Mrs. Zink asserts that it is evident that Ms. Goforth exercised no care whatsoever because Ms. Goforth reported the incorrect information to the physician. It is true that Ms. Goforth did change what she reported to the physician upon arrival at hospital. Initially, she indicated that she gave the drug intravenously. She then quickly retracted that statement, indicating that it was done subcutaneously. However, shortly thereafter she reiterated that she did in fact administer it via the wrong route – intravenously. Viewing this evidence in a light most favorable to the Zinks, it could indicate that Ms. Goforth was confused and uncertain of

what she did. Even assuming that Ms. Goforth was confused or distracted while administering the epinephrine, the Zinks have not demonstrated that Ms. Goforth exercised no care whatsoever in light of the other circumstances discussed above. Instead, the record and arguments only support the conclusion that Ms. Goforth made an unfortunate mistake in the midst of exercising what otherwise appears to have been good judgment.

{¶27} Given the foregoing, and in light of the arguments made on appeal, we conclude there was no evidence that Ms. Goforth acted in a wanton manner. Accordingly, the trial court did not err in granting the City summary judgment on the basis that it was immune.

{¶28} The Zinks' sole assignment of error is overruled.

III.

{¶29} We affirm the judgment of the Summit County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

CARLA MOORE
FOR THE COURT

CANNON, J.
CONCURS.

CARR, P. J.
CONCURS IN JUDGMENT ONLY.

(Cannon, J., of the Eleventh District Court of Appeals, sitting by assignment.)

APPEARANCES:

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