

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GLEN HUDDER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:24-cv-334-MTS
)	
JAMES FROESE,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Before the Court is Defendant James Froese’s Motion to Dismiss and/or Strike, Doc. [17]. Plaintiff Glen Hudder initially filed his Complaint, Doc. [8], in the Circuit Court of St. Charles. Thereafter, Defendant removed the action to this Court pursuant to 28 U.S.C. § 1332 and § 1446. Doc. [1]. Plaintiff then amended his Complaint, Doc. [16]. Now, Defendant seeks dismissal of Count II of Plaintiff’s Amended Complaint.¹ For the reasons that follow the Court will deny Defendant’s Motion.

I. Background

On or about June 26, 2022, Plaintiff and Defendant were operating motor vehicles in St. Charles County, Missouri, when Defendant allegedly violated a red traffic signal and made a left turn resulting in a collision with Plaintiff’s vehicle. Doc. [16] ¶¶ 6-9. As a result of the accident, and the alleged improper adherence to traffic signals, Plaintiff filed suit alleging claims for negligence and negligence per se. *Id.* at 2,4. It is Plaintiff’s contention that Defendant’s conduct violated § 310.060 of the City of St. Charles’ Code of Ordinances, as well as Mo. Rev. Stat. §§ 304.351 and 304.281. *Id.* ¶¶ 18-19.

¹ Defendant’s Motion is also denoted as a Motion to Dismiss and/or More Definite Statement. *See* Doc. [17]. However, the Motion only discusses dismissal of Plaintiff’s negligence per se claims. Neither the Motion, nor the supporting memorandum contemplates where a more definitive statement is necessary or required.

These sections read as follows:

Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown.

St. Charles, Missouri, Ordinance tit. II, § 310.060.3.a.

Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection at a clearly marked stop line, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown[.]

Mo. Rev. Stat. § 304.281(3)(a).

The driver of a vehicle within an intersection intending to turn left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

Mo. Rev. Stat. § 304.351(3). Defendant now seeks dismissal of Count II.

II. Discussion

“Whether negligence exists in a particular situation depends on whether or not a reasonably prudent person would have anticipated danger and provided against it.” *Lowdermilk v. Vescovo Bldg. & Realty Co., Inc.*, 91 S.W.3d 617, 628 (Mo. Ct. App. 2002). “Negligence per se ‘is a form of ordinary negligence that results from violation of a statute,’” and “arises where the legislature pronounces in a statute what the conduct of a reasonable person must be, whether or not the common law would require similar conduct.” *Id.* When the legislature has done so, “the court then adopts the statutory standard of care to define the standard of conduct of a reasonable person,” and “the jury is instructed on the statutory standard of care rather than the care of the reasonable person.” *Id.* Therefore, the Court must consider the legislative intent of § 310.060, § 304.281, and § 304.351.²

Here, the codes referenced by Plaintiff’s Amended Complaint set out a standard of care sufficient to allege a claim of negligence per se. As mentioned, § 310.060 provides that vehicles

² Mo. Rev. Stat. § 304.281 has previously been found to be a valid premise for a negligence per se action, and as a result, it will not be evaluated further. See *Wheeler ex rel. Wheeler v. Phenix*, 335 S.W.3d 504 (Mo. Ct. App. 2011).

facing a red traffic signal shall “stop before entering the crosswalk” or “intersection.” Section 304.351 provides a similar prohibition that drivers “shall yield the right of way to any vehicle approaching from the opposite direction.” Mo. Rev. Stat. § 304.351. These are within the “class of safety statutes on which negligence per se is ordinarily based.” *Lowdermilk*, 91 S.W.3d at 628. Furthermore, each statute indicates the specific conduct that constitutes a violation allowing it to serve as the basis of a negligence per se claim. *See id.*; *see also Cisco v. Mullikin*, 4:11-cv-295-RWS, 2012 WL 549504, at *2 (E.D. Mo. Feb. 21, 2012) (explaining that a statute “prohibit[ing] driving on the wrong side of the road” was “properly submitted under *negligence per se* theory because it indicates specific conduct that violates the statute”); *cf. Whittaker v. CRST Malone, Inc.*, 4:18-cv-1048-HEA, 2019 WL 931966, at *1 (E.D. Mo. Feb. 26, 2019) (explaining that negligence *per se* cannot be claimed where a statute “does not indicate specific conduct that constitutes a violation and does not set out a statutory standard of care”). Therefore, because the legislature has detailed in the statutes what the conduct of a reasonable person must be—specifically that drivers shall stop before the crosswalk and remain standing until a green signal, as well as to yield the right of way, respectively—a claim of negligence per se has been properly alleged.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss and/or Strike, Doc. [17], is **DENIED**.

Dated this 28th day of August 2024.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE