

[Cite as *Lotenero v. Blubaugh*, 2005-Ohio-4014.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85678

MICHAEL LOTENERO :
 :
 Plaintiff-appellant : ACCELERATED DOCKET
 :
 vs. : JOURNAL ENTRY
 : and
 : OPINION
 JEFF BLUBAUGH, et al. :
 :
 Defendants-appellees:

DATE OF ANNOUNCEMENT
OF DECISION : AUGUST 4, 2005

CHARACTER OF PROCEEDING : Civil appeal from Cuyahoga
 : County Common Pleas Court
 : Case No. 521526

JUDGMENT : REVERSED AND REMANDED.

DATE OF JOURNALIZATION :

APPEARANCES:

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KENNETH A. ROCCO, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the lower court, the briefs and the oral arguments of counsel. Plaintiff-appellant, Michael Lotenero, complains that the common pleas court erred by granting summary judgment in favor of defendants-appellees, the City of Solon and Police Officer Jeff Blubaugh. He asserts that there were genuine issues of material fact concerning whether (1) Officer Blubaugh was responding to an emergency call at the time of the collision, and (2) Officer Blubaugh was operating the police vehicle in a wanton or reckless manner.

{¶ 2} We agree with appellant that genuine issues of material fact precluded summary judgment. There is conflicting evidence in the record whether Officer Blubaugh activated the lights and siren on his police cruiser before the collision. There is also conflicting evidence whether plaintiff's left turn signal was on as Officer Blubaugh approached. These facts bear directly on the question whether Officer Blubaugh acted recklessly in attempting to

pass appellant on the left. Cf. *Hall-Pearson v. South Euclid* (Oct. 8, 1998), Cuyahoga App. No. 73429.

Reversed and remanded for further proceedings.

This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellees his costs herein.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO
JUDGE

ANTHONY O. CALABRESE, JR., J. CONCUR

DIANE KARPINSKI, P.J. CONCURS
(SEE ATTACHED CONCURRING OPINION)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the

clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85678

MICHAEL LOTENARO)	
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Plaintiff-appellant)	
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vs.)	CONCURRING
)	
)	OPINION
JEFF BLUBAUGH, et al)	
)	
Defendants-appellees)	

Date: AUGUST 4, 2005

Karpinski, P.J., concurring:

{¶ 3} I concur with the majority's opinion and the result they reach in this case. I write separately, however, because neither the parties nor the majority refers to R.C. 4511.03, which states as follows:

4511.03. Emergency vehicles to proceed cautiously past red or stop signal

BLOCK (A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

See, *Peoples v. Willoughby* (1990), 70 Ohio App.3d 848, 592 N.E.2d 901 (There was sufficient evidence to support a finding of willful and wanton misconduct when a police officer proceeded at a high rate of speed through an intersection without sounding his siren); *Rosenstiel v. Weigel* (1962), 117 Ohio App. 383, 184 N.E.2d 772, (Emergency vehicles must proceed cautiously past a red signal "by slowing down as necessary for the safety of all persons using the street or highway."); *Neely v. Mifflin Township*, (Sept. 30, 1996), Franklin App. No. 96APE03-283.

{¶ 4} In the case at bar, not only is there a genuine issue of material fact remaining on the question of whether the officer's siren and lights were on, but there is also a question about whether he was operating his vehicle in conformity with R.C. 4511.03 when he approached the intersection of Park East and SOM Center roads.

{¶ 5} In the motion for summary judgment, Officer Blubaugh stated he was traveling at "45-50" mph. Defendants' Exhibit marked "Solon Accident Report #02-00378" which was appended to defendants' Motion for Summary Judgment indicated the intersection was marked by a stop sign. The posted speed limit is 25 mph. The question of whether the officer acted willfully or wantonly by traveling twenty to twenty-five miles beyond the posted speed limit should be answered by the jury.

{¶ 6} Accordingly, the trial court erred because defendants, as the moving parties, have not satisfied their initial burden of proof pursuant to Civ.R. 56.