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IN THE
COURT OF APPEALS OF INDIANA

ROLLA G. TRENT, as Administrator of the Estate of SHIRLEY TRENT, Deceased,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 52A04-0811-CV-653
RODNEY L. RICHARD,	)	
Appellee-Defendant.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Christopher M. Goff, Special Judge
Cause No. 52C01-0503-CT-000145

AUGUST 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Rolla G. Trent, as Administrator of the Estate of Shirley Trent, deceased, appeals from a summary judgment entered in favor Rodney Richard, the defendant in a civil lawsuit filed by Trent. The lawsuit was occasioned by the death of Shirley Trent in a head-on collision between her vehicle and a police vehicle driven by Richard, a City of Peru police officer.

Officer Richard was attending a meeting of the third shift at approximately 2:30 a.m. on December 21, 2004. During the meeting, Officer Richard overheard a central dispatch sending Miami County Deputy Sheriff Jumper on a run within the county but not within the city limits of Peru. Details surrounding the dispatch caused Officer Richard to suspect that the run involved his parents and his brother. He called the dispatcher and learned that his mother had called 911 advising of a suicide attempt by his brother.

Officer Richard requested permission from his superior officer to respond to the dispatch. He was given that permission. En route to his destination at his parents' house, Officer Richard was driving in the southbound lane when he crested a hill and saw oncoming headlights approximately 200 feet away in his lane of travel.[1] That other vehicle was being driven by Shirley Trent who was delivering newspapers to newspaper tubes installed on that side of the road. Richard was unable to stop his car and the ensuing head-on collision resulted in Trent's death.[2]

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[1] Officer Richard concedes that the evidence is in dispute as to whether he had his siren and his overhead emergency lights on. He asserts, however, that this fact is irrelevant to whether or not he was within the scope of his employment.

[2] According to the State Police accident reconstructionist, the vehicle driven by Officer Richard was

The issue before us is whether there is a genuine issue of material fact regarding Officer Richard's employment status at the time of the accident. This is because if at the time of the accident, Officer Richard was acting within the scope of his employment as a City of Peru police officer, he is immune from personal liability. *See Bushong v. Williamson*, 790 N.E.2d 467, 472 (Ind. 2003) (holding that pursuant to the Indiana Tort Claims Act, governmental employees who act within the scope of their employment are immune from liability). *See also Long v. Barrett*, 818 N.E.2d 18 (Ind. Ct. App. 2004), *trans. denied*.

Here, by granting summary judgment to Officer Richard, the trial court concluded that, as a matter of law, Officer Richard was acting within the scope of his employment. In an appeal involving summary judgment, the appealing party bears the burden of persuasion, and we assess the trial court's decision to ensure that the parties were not improperly denied their day in court. *Id.* at 22. We analyze the issues in the same way the trial court would. *Id.* Specifically, summary judgment is appropriate only where the designated evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Whether certain acts of an employee are within the scope of employment may be determined as a matter of law if the materials conclusively demonstrate. *Id.* at 24.

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traveling a minimum of 74 mph at the point of impact but a minimum of 94 mph at the initial point of braking. He concluded that although Officer Richard was driving at an excessive speed, "the primary cause of the accident was driving LEFT OF CENTER by the Trent vehicle." (Emphasis in the original). Appellant's App. at 215.

Trent contends that when Officer Richard responded to the dispatch involving an apparent suicide attempt by his brother at his parents' house, Richard was on a personal mission rather than carrying out his law enforcement duties as a Peru police officer and was therefore not acting within the scope of his employment. Officer Richard, on the other hand, contends that he was acting in the scope of his employment because he was acting in part to further the interests of his employer. In support of his contention, Officer Richard directs us to *Doe v. Lafayette School Corp.*, 846 N.E.2d 691, 701-702 (Ind. Ct. App. 2006), *abrogated in part on other grounds*, 856 N.E.2d 778 (Ind. Ct. App. 2006), wherein this court held as follows:

> An employee is acting within the scope of his employment when he is acting, *at least in part*, to further the interests of his employer. Where an employee acts partially in self-interest but is still 'partially serving his employer's interests' liability will attach.

(Emphasis added) (Citations omitted). Similarly, in *Konkle v. Henson*, 672 N.E.2d 450, 456-457 (Ind. Ct. App. 1996), this court stated the same principle would apply to a situation in which the employee "is *primarily* motivated by self-serving purposes." (Emphasis added).

Therefore, despite the fact that Officer Richard had a great personal interest in pursuing the dispatch involving his family, if his acts retained a degree of furthering the law enforcement interest of the Peru Police Department, under the law he would be immune from personal liability. Officer Richard enumerates the following eleven factors which militate in favor of a conclusion that he was acting in the scope of his employment at the time of the collision:

> Richard was 1) on duty, being paid by the city at the time of the accident; 2) had not clocked out; 3) was in police uniform and was driving a police unit[3]; 4) was authorized by his supervisor to respond to the emergency call; 5) the supervisor knew the nature of the call, and knew that it involved Richard's brother; 6) the supervisor believed Richard would be the first to arrive at the scene;[4] (7) an ambulance had been called but EMTs would not enter a home on a suicide risk unless law enforcement was there first; (8) Richard was a good candidate to respond to this call, seeing as he had the ability to calm down his brother, a crack cocaine user; (9) the Peru police responded to emergencies outside the city limits, particularly on third shift;[5] (10) responding to a suicide call is an appropriate law enforcement response, and (11) when William had attempted suicide in the past, law enforcement always responded.

Appellee's Br. at 16-17.

In light of this designated evidence, and more particularly in light of the applicable Indiana case precedent, we hold that the trial court correctly determined that notwithstanding Officer Robert's personal interest and motivation in responding to the emergency dispatch, as a matter of law, Officer Robert was acting within the scope of his employment at the time of the accident. Accordingly, we affirm the trial court's grant of summary judgment.

Affirmed.

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[3] In a footnote, Officer Richard observes that "Trent contends that Richard's use of a police vehicle while responding to the emergency is 'not a factor' in the scope of employment determination because Richard took the vehicle home each day." Appellee's Br. at 16, n. 6. However, Officer Richard points out that he was not going home at the time of the accident. He was still working his shift which began at 11:00 p.m. Appellee's Br. at 16.

[4] This conclusion was prompted, at least in part, by the fact that Deputy Sheriff Jumper, the only Deputy on patrol at that time had to travel a greater distance to the site.

[5] Richard maintains that although Peru city police had not been seen traveling past the Richard home in the past and had not responded to previous suicide calls, the police had made other runs within the county and it was appropriate to do so on this occasion.

FRIEDLANDER, J., and NAJAM, J., concur.