



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/8/18	SM	Favorable
2/13/18	JU	Fav/CS
2/19/18	GO	Favorable
2/22/18	RC	Favorable

February 8, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 28** – Judiciary Committee and Senators Bill Montford
and Linda Stewart
HB 6527 – Representative Ramon Alexander
Relief of Christopher Cannon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$500,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN CHRISTOPHER V. CANNON, THE CLAIMANT, AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE VEHICLE WHICH INJURED CHRISTOPHER CANNON.

FINDINGS OF FACT:

This claim arises out of an accident involving a Dial-a-Ride (DART) vehicle and a motorcyclist, Christopher V. Cannon, which occurred on December 16, 2015, in Tallahassee, Florida. The Star Metro department of the City of Tallahassee provides public transport services on DART vehicles to residents with qualifying disabilities. The City of Tallahassee employed Ms. Rosie Kelly as a DART driver.

On December 16, 2015, Ms. Kelly was driving a DART vehicle during work hours. According to witness statements, as documented in the Leon County Sheriff's Office accident report, Ms. Kelly made a left turn onto southbound Capital Circle Northwest, from Old Bainbridge Road while Mr. Cannon

was driving his motorcycle northbound on Capital Circle Northwest. Ms. Kelly hit Mr. Cannon in a head-on crash, causing him to be ejected from his motorcycle. Mr. Cannon was not communicative at the scene. Mr. Cannon was transported by ambulance to Tallahassee Memorial Hospital. At the time of the accident, Mr. Cannon was wearing a motorcycle helmet and other protective gear in the form of a jacket and boots.

At the time of impact, Mr. Cannon suffered multiple trauma. Specifically, the accident caused Mr. Cannon to have various fractures and a pulmonary contusion. On December 17, 2015, Dr. Hank Hutchinson of Tallahassee Memorial Healthcare operated on Mr. Cannon by inserting a permanent rod in his right lower leg and a plate in his right upper arm. On January 6, 2016, Mr. Cannon underwent a second surgery for infection, while under anesthesia, at which time, Dr. Hutchinson excised and closed the infected wound.

Based on the accident, Officer Robert Gaines III issued a traffic citation to Ms. Kelly for violating the right of way with serious bodily injury.

Not including this incident, Ms. Kelly has had 7 prior accidents in her capacity as a driver for the City of Tallahassee. The City documented in Disciplinary Accident Reports each of these previous incidents as preventable accidents. Discipline ranged from a written reprimand to suspension.

On March 30, 2016, the court held a nonjury trial on the infraction as is required in incidents in which an accident results in serious bodily injury (s. 318.19(2), F.S.) On April 4, 2016, the court found Ms. Kelly guilty of both failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and of causing serious bodily injury to Mr. Cannon. The court suspended Ms. Kelly's commercial driver's license for a period of 90 days.

FUTURE SERVICES REPORT: Dr. Hutchinson drafted a future care plan dated November 9, 2017. In it, he indicates that Mr. Cannon's arm and leg, fractured in the incident, have completely healed. Mr. Cannon has a full range of motion in his shoulder, elbow, forearm, hand, and wrist and walks with a smooth and steady gait. He is at a significantly less than 50 percent chance of needing

hip, knee, or ankle replacement surgery in the future, and is at very low risk of long-term arthritis due to the injuries.

LITIGATION HISTORY:

On July 11, 2016, Christopher V. Cannon filed a Complaint for Damages against the City of Tallahassee in Leon County Circuit Court. The complaint alleged an action for damages against the City of Tallahassee based upon negligent hiring, discipline, and supervision of employee Rosie Kelly whose negligent driving proximately caused permanent personal injuries to Mr. Cannon. The plaintiff filed a first amended complaint on January 11, 2017, adding a Count II cause of action against the City of Tallahassee, based upon vicarious liability.

On February 9, 2017, the City filed an answer to the first amended complaint. In it, the City admitted negligence based on vicarious liability, as asserted in Count II of the plaintiff's complaint. The City also moved to dismiss Count I of the complaint.

On March 3, 2017, the parties filed a joint motion for partial summary judgment. In their motion, the parties moved to dismiss Count I of the complaint in exchange for the City of Tallahassee admitting liability under Count II based on the vicarious liability doctrine of respondeat superior. The court granted the motion and reserved judgment on the issue of damages. On June 22, 2017, the court entered a final judgment for damages in the amount of the agreed to settlement of \$200,000.

On May 24, 2017, the parties entered into a Mediation Settlement Agreement. Therein, the City of Tallahassee agreed to a total settlement of \$700,000, of which the City would pay the first \$200,000 within 14 days after approval by the City Commission and agreed to pay the remaining \$500,000 through a claim bill. The City Commission approved the settlement amount at a City Commission meeting held on June 14, 2017.

Subsequently, the parties submitted to the court a Consented Motion for Court Approval of Settlement and Final Judgment. In it, the parties agreed that upon the entry of a court order approving the settlement, the City would pay \$200,000 to the plaintiff and the Plaintiff would execute a general release and secure a dismissal with prejudice. The court entered an Order

Granting the Consented Motion for Court Approval of Settlement and Final Judgment on June 22, 2017. The plaintiff then filed with the court a Motion for a Voluntary Dismissal with Prejudice on October 16, 2017.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Ms. Kelly had a duty to safely operate the Dial-a-Ride bus. Ms. Kelly breached that duty by operating the bus in a negligent manner. Specifically, Ms. Kelly drove negligently by turning left when it was not clear to do so and colliding with Mr. Cannon. Had Ms. Kelly properly looked before attempting to turn, she would have seen Mr. Cannon and avoided hitting him, as it was foreseeable that she could have hit someone. Ms. Kelly was 100 percent at fault for causing the collision.

As a direct and proximate result of the negligence of Ms. Kelly, Mr. Cannon suffered permanent bodily injury. He has experienced pain and suffering, multiple surgeries, disfigurement, hospitalization and other medical costs, and loss of earnings.

As a result of the accident, Mr. Cannon suffered multiple fractures. He underwent several surgeries to have a rod and screws inserted through his right tibia (shinbone), and plates and screws to his right humerus (upper arm). The rod, plates, and screws are permanent. Mr. Cannon also had to be readmitted to the hospital and operated on for a wound infection on his left thigh. The surgery left Mr. Cannon with considerable scarring and permanent disfigurement at the surgery sites.

Mr. Cannon testified at his deposition that he doesn't have full strength or feeling in the areas in which he was injured. He additionally stated that now his right leg hurts if he stands on it for long periods of time.

RESPONDENT'S POSITION:

At the claim bill hearing, the City of Tallahassee admitted liability and indicated that the City fully supports the claim.

CONCLUSIONS OF LAW:

Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mr. Cannon will not receive the full benefit of his settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585,586 (Fla.1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Ms. Kelly failed to use reasonable care by not looking to the left before turning the Dial-a-Ride bus onto Capital Circle at a red light. Had Ms. Kelly looked properly, she would have seen Mr. Cannon to the left of her, and avoided striking him with her vehicle.

Due to Ms. Kelly's breach of her duty of care, she caused the accident and Mr. Cannon's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. "When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being

operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer, or other corporate purposes, the municipality may be liable for injuries ... caused by negligence of the truck driver in operating the truck" *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Ms. Kelly at the time of the accident. On that day, Ms. Kelly drove the Dial-a-Ride vehicle owned by the City of Tallahassee during the course of her normal workday. Therefore, the City of Tallahassee is liable for the negligence of Ms. Kelly and the damages caused to Mr. Cannon.

The claimant has demonstrated significant economic damages. Medical costs alone total \$211,177. Of this, Mr. Cannon incurred medical bills in the amount of \$180,235 from the Tallahassee Memorial Hospital (TMH) through a subrogation lien. TMH subsequently agreed to reduce the amount of the lien to \$100,000 and to payment as follows: \$25,000 after distribution of the first settlement with the City of Tallahassee, and \$75,000 should the claim bill be approved. Due to missing work for a month and a half, Mr. Cannon lost income of \$4,500 that he would have earned during that time. Additionally, he purchased the new motorcycle that was totaled in the accident just one day earlier for \$5,757.

Noneconomic damages have not been calculated for Mr. Cannon. However, since the accident, Mr. Cannon finds running difficult and he limps at times. When the temperature is cold, he feels the titanium in both his arm and leg. He also experiences chronic numbness at several of the surgery sites.

Should this case have proceeded to trial, Mr. Cannon appears to have presented as a sympathetic plaintiff based upon: having been just 20 years of age at the time of the incident, undergoing multiple surgeries, and living permanently with a rod, plates, and screws placed internally. Additionally, he was

not at-fault for his injuries and was even wearing a motorcycle helmet and other protective gear at the time of the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY:

This is the first year in which the claim bill has been filed.

COLLATERAL SOURCES:

The claimant represents that he has not received payment from any collateral sources.

ATTORNEY'S FEES:

The bill provides that the total amount paid for attorney fees relating to this claim is limited to 25 percent of the \$500,000 claim.

Mr. Cannon's attorney further agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. However, 5 percent of the award will be payable to the lobbyist for his lobbying services and this amount will be paid from the attorney's fee.

Therefore, the total amount of fees payable for attorney and lobbying fees is \$125,000.

FISCAL IMPACT:

The City of Tallahassee is self-insured. If approved by the Legislature, the \$500,000 will be paid from the City's self-insurance fund. The City represents that it has reserved this amount for the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 28 (2018) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the claimant's attorney to be paid \$100,000, which is 20 percent of the \$500,000 claim bill. The lobbyist for the claim bill is to be paid \$25,000, which is 5 percent of the claim bill.