

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Stephanie Levette Cason, Individually)
And as Personal Representative of the)
Estate of J.D. Pitts-Johnson, a deceased)
Minor and Rakeem Rashaud Johnson,)
Father of J.D. Pitts-Johnson, the)
Deceased Minor,)
Plaintiff,)
v.)
Greenville City Police Department,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2024-CP-23-04676

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SC Court of Appeals

**ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

This matter was before the Court on Defendant's Motion for Partial Summary Judgment. The motion was heard on June 1, 2026. Appearing on behalf of the Defendant were V. Clark Price and Roni Payne of Cassidy Coates Price, P.A. Appearing on behalf of the Plaintiffs was Lola S. Richey.

The Defendant has moved for summary judgment as to the Fifth and Sixth causes of action. The motion is made pursuant to Rule 56, South Carolina Rules of Civil Procedure.

The Plaintiffs oppose the motion and contend that there are genuine issues of material fact that require the Defendant's motion be denied. Counsel for both parties have fully briefed their respective positions and argued those positions at the hearing. Counsel are commended for their arguments presented in support of their respective positions. Based on a review of the file, pleadings, submissions of the parties and oral argument, the Court finds that the Defendant's motion for summary judgment as to the Fifth and Sixth causes of action should be granted.

The Defendant argues that the Fifth Cause of Action, which alleges negligent infliction of emotional distress, should be dismissed because neither of the Plaintiffs personally witnessed the pursuit and the crash that occurred after the pursuit was terminated by the Defendant's police officers. The Court agrees with the City's position.

There are five elements of the cause of action for negligent infliction of emotional distress:

- (1) the negligence of the defendant must cause death or serious physical injury to another;
- (2) the plaintiff bystander must be in close proximity to the accident;
- (3) the plaintiff and the victim must be closely related;
- (4) the plaintiff must contemporaneously perceive the accident; and
- (5) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Recovery for this type of direct claim for emotional and physical upset is limited to bystander recovery. Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985).

There is no evidence that either Plaintiff was a bystander and present when the stolen vehicle in which Plaintiff's decedent J. D. Pitts-Johnson was a passenger crashed. Neither witnessed the crash. The bystander requirement is not met, and the Defendant is therefore entitled to summary judgment as to the Fifth Cause of Action.

The Defendant contends that it is entitled to summary judgment as to the Sixth cause of action which the Plaintiffs describe in their Amended Complaint as "Violation of the Fourteenth Amendment under 42 U.S.C. §1983 (Deprivation of life without due process)." The Plaintiffs contend that the Defendant is liable for the actions of their officers under the doctrine of Respondeat Superior, and for failing to adequately train, supervise, and discipline their officers. The Defendant has moved for summary judgment on this cause of action because the Plaintiffs

have not alleged nor presented evidence showing that the Defendant or its officers acted during the pursuit with an intent to harm the occupants of the stolen vehicle. The Defendant contends that a showing of intent to harm is required to establish a Monell-type claim against the City arising from the police pursuit. The Court agrees with the Defendant's position.

In Monell v. Dep't of Social Services, 436 U.S. 658 (1978), The United States Supreme Court established that "a local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible for under Section 1983."

A Monell claim is dependent on the establishment of a constitutional injury inflicted by the officers in order to trigger potential liability under Section 1983. The claim against the Defendant requires a showing that the actions of the Defendant's officers during the course of the pursuit rose to the level of a denial of Plaintiffs' constitutional rights. See Waybright v. Frederick County, MD, 528 F.3d 199, at 209, citing City of Los Angeles v. Heller, 475 U.S. 796, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986).

In a police pursuit case brought under Section 1983, the proof required to survive summary judgment must be more than evidence of negligence, gross negligence, recklessness, or even deliberate indifference on the part of the officers involved in the pursuit. Evidence that the officers intended to harm the Plaintiffs' decedent must be shown in order to establish an issue of fact as to whether a constitutional injury was inflicted. The Plaintiffs do not have evidence of intent to harm here.

Police officers who engage in vehicular pursuits of criminals attempting to avoid capture are not liable for injuries sustained during the pursuit in the absence of a specific intent on the part of the officers to harm the person suffering injury. This standard was established by the United States Supreme Court in the case of County of Sacramento v. Lewis, 523 U.S. 833, at 841 n.5, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). In Lewis, the Supreme Court examined whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate indifference or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected criminal offender. The Court rejected the plaintiff's substantive due process claim where police engaged in a high-speed chase of a motorcycle on which the plaintiff's minor decedent was riding as a passenger. The motorcycle crashed, and the decedent was struck by one of the pursuing patrol cars. The decedent's parents brought a Section 1983 action against the County of Sacramento.

The Supreme Court held that the Fourth Amendment's reasonableness standard did not apply; that an allegation that the pursuit was undertaken with deliberate indifference to the passenger's survival was insufficient to state a substantive due process claim; and that high-speed police pursuits with no intent to physically harm suspects do not give rise to liability under the Fourteenth Amendment.

The Fourth Circuit, following the holding in Lewis, has established that "regarding police actions, 'high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment [that is] redressible by an action under Section 1983'". Dean for and on behalf of Harkness v. McKinney, 976 F.3d 407, at 418 (4th Cir. 2020), quoting Lewis, 523 U.S. 833, at 854, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

Because there is no evidence that the Defendant's police officers intended to harm the Plaintiff's decedent, the Defendant is not liable as a matter of law as to the Monell cause of action. See Waybright, supra, 528 F.3d 199, at 209.

For the reasons set forth herein, the Court finds that the Defendant is entitled to summary judgment as to both the Fifth and Sixth Causes of Action.

AND IT IS SO ORDERED.

G.D. Morgan, Jr., Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

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Greenville Common Pleas

Case Caption: Stephanie Levette Cason , plaintiff, et al vs. Police Department
Greenville City , defendant, et al

Case Number: 2024CP2304676

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.