



# Court of Claims of Ohio

The Ohio Judicial Center  
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Columbus, OH 43215  
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DARLENE LANE FERRARO, etc.

Plaintiff

v.

THE OHIO STATE UNIVERSITY  
MEDICAL CENTER

Defendant

Case No. 2011-10371

Judge Alan C. Travis

ENTRY

FILED  
COURT OF CLAIMS  
OF OHIO  
2012 JUL 31 PM 1:22

On May 16, 2012, the court ordered the parties to submit briefs “on the issue of whether this court has authority to issue an immunity determination in this matter.” On June 25, 2012, defendant submitted its brief. Plaintiff filed a response on July 5, 2012.

According to the complaint, on or about September 10, 2009, decedent, Junior Lee Lane, was a passenger in a Dodge Ram (truck), operated by Gary Fury, traveling northbound on Interstate 71 (I-71).<sup>1</sup> Attached to the truck was a trailer. At some point during their travels, the trailer began to sway and Fury stopped the truck and trailer in the second lane from the left. Lane alighted from the vehicle and attempted to reconnect the trailer to the truck. Another passenger, Jesse Fury, stood at the rear of the trailer waving a white shirt to alert oncoming traffic of the stopped truck.

Rolf Barth, M.D., a professor in the Department of Pathology at The Ohio State University College of Medicine, was also heading northbound on I-71. Dr. Barth was traveling from Columbus to Cleveland to attend a conference hosted by the Cleveland Clinic. (Defendant’s Exhibit A, June 25, 2012 brief.) Dr. Barth’s vehicle collided with the trailer, which pinned Lane between the truck and trailer. Lane subsequently succumbed to his injuries.

R.C. 9.86, entitled “Civil immunity of public officers and employees; exceptions,” provides as follows: “[e]xcept for civil actions that arise out of the operation of a motor

<sup>1</sup>Gary Fury also filed an action against defendant. See Case No. 2011-12366.

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*vehicle* and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner." (Emphasis added.)

It is undisputed that this case concerns injuries sustained as a result of the operation of a motor vehicle. Consequently, Dr. Barth is not entitled to personal immunity pursuant to R.C. 9.86 and 2743.02(F) and there is no need for this court to conduct an immunity hearing.

Nevertheless, it is agreed that Dr. Barth is an employee of the state as defined in R.C. 109.36. Thus, pursuant to the general waiver of liability in R.C. 2743.02(A), defendant may still be liable to plaintiff based upon a theory of respondeat superior so long as Dr. Barth's conduct was within the scope and course of his state employment. *Byrd v. Faber*, 57 Ohio St.3d 56, 58 (1991); *Elliott v. Ohio Dept. of Rehab. and Corr.*, 92 Ohio App.3d 772, 776 (10th Dist.1994); see R.C. 2743.16(B); *Ratliff v. Industrial Commission of Ohio*, 85 Ohio Misc. 2d 79 (Ct. of Cl.1997); 2001 Ohio Op. Atty Gen. 221, 2001 Ohio Op. Atty Gen. No. 37.

The parties disagree whether Dr. Barth was engaged in the course of his state employment at the time of this motor vehicle accident. Accordingly, a status conference is scheduled for *August 31, 2012, at 1:30 p.m.*, to discuss a date for an evidentiary hearing to determine whether Dr. Barth was "engaged in the course of his employment or official responsibilities for the state" at the time of the accident pursuant to R.C. 2743.16(B).

  
ALAN C. TRAVIS  
Judge

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