

FILED
IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY, OHIO

KIMBERLY MARCUM, 2019 OCT 23 AM 9:30

Plaintiff,

v.

GAYLE BREIDENBACH et al.,

Defendants.

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Case No. 18CV467

Judge Berens

Entry Regarding Defendant's
Partial Motion for Summary
Judgment

This matter is before the Court upon Defendants, Gayle Breidenbach (“Ms. Breidenbach”), Canal Winchester Local Schools, and the Board of Education of Canal Winchester’s Motion for Partial Summary Judgment on Plaintiff’s claim for Punitive Damages, filed June 25, 2019. Plaintiff did not file a response to Defendants’ Motion. Defendants filed a Reply in Support of their Motion for Partial Summary Judgment on October 15, 2019. For the following reasons, the Court GRANTS Defendants’ Motion for Partial Summary Judgment on Plaintiff’s claim for Punitive Damages.

STATEMENT OF THE CASE

This matter arises out of a claim for negligence stemming from a motor vehicle accident on August 26, 2019 in which Ms. Breidenbach, while driving a school bus, struck the vehicle Plaintiff was driving. *See generally*, Compl. Plaintiff’s Complaint also included a claim for punitive damages against Defendants, alleging that “[t]o the extent the evidence establishes that Defendant Breidenbach was: (a) using any electronic devices immediately prior to the collision...or; (b) was otherwise engaged in distracted driving immediately prior to the collision...Defendant Breidenbach’s negligence may merit the imposition of punitive damages.” Compl. ¶¶ 18-19. The parties have agreed, pursuant to a Joint Stipulation, filed April 4, 2019, that Defendants’ negligence was the proximate cause of the accident. Defendants do not agree or stipulate to

Plaintiff's claim for punitive damages, nor do they agree or stipulate that Plaintiff was injured in the accident.

STANDARD OF REVIEW

Ohio Civ. R. 56(A) and (B) permit both plaintiffs and defendants to move for summary judgment on all or part of any claim. Summary judgment is appropriate when (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 47 (1978).

The party moving for summary judgment has the initial burden of demonstrating the absence of any genuine issues of material fact and must “specifically delineate the basis for which summary judgment is sought in order to allow the opposing party a meaningful opportunity to respond.” *Mitseff v. Wheeler*, 38 Ohio St. 3d 112, 116, 526 N.E.2d 798, 802 (1988); *Dresher v. Burt*, 75 Ohio St. 3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264, 274. In so doing, the moving party cannot rest on bare conclusory assertions that the non-movant lacks evidence or cannot prove her case. “Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ. R. 56(C)[.]” *Dresher*, at 293. If the moving party fails to meet its burden, summary judgment is inappropriate; however, if the moving party meets its initial burden, the burden then shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. *Id.*, at 294. If the non-movant does not so respond, “summary judgment, if appropriate, shall be entered against the nonmoving party.” *Id.*; *Egli v. Cong. Lake Club*, 5th Dist. No. 2009-CA-00216, 2010-Ohio-2444 (June 1, 2012), *appeal not allowed*, 126 Ohio St. 3d 1600, 2010-Ohio-4928, 935 N.E.2d 46; Ohio Civ. R. 56(E).

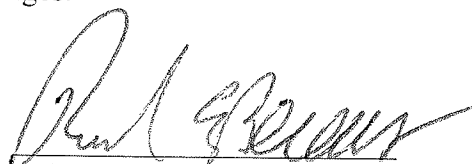
LAW AND ANALYSIS

Defendants submit that Plaintiff's claim for punitive damages is premised on the purely speculative possibility that evidence would establish Ms. Breidenbach was using electronic devices or was distracted immediately prior to the collision. Compl. ¶¶ 18-19. Defendants argue discovery has confirmed that Plaintiff has no basis for her claim that Ms. Breidenbach was using an electronic device or was distracted immediately prior to the accident; nor was she engaged in any conduct which would merit an award of punitive damages. In support of their argument that Ms. Breidenbach was not engaged in any conduct that would merit an award of punitive damages, Defendant cites *Stephenson v. Upper Valley Family Care, Inc.*, 2nd Dist. Miami No. 07CA12, 2008-Ohio-2899, in which the court found that "punitive damages are assessed for punishment and not compensation, a positive element of wrongdoing is always required." *See also Simpkins v. Grace Brethren Church of Delaware*, 2014-Ohio-3465, 16 N.E.3d 687, ¶ 87 (5th Dist.) Specifically, Defendants submit that in Ms. Breidenbach's responses to Plaintiff's Requests for Admissions, Ms. Breidenbach denied "that you were using an electronic device¹ with the 45 minutes prior to the occurrence." Defendants submit that un rebutted testimony, such as Ms. Breidenbach's denial, is appropriate summary judgment evidence. *Anginoli v. Beneson Capital Co.*, 1st Dist. Hamilton No. C-980811, 2000 WL 955422 (Dec. 23, 1999). Further, Defendants submit that the un rebutted testimony is the only evidence relating to Ms. Breidenbach's use of electronic devices or distractions leading up to the crash, as discovery has closed. Therefore, Defendants argue they have met their initial burden of showing there is no genuine issue of material fact remaining relating to Plaintiff's claim for punitive damages; and thus, the burden shifts to Plaintiff to demonstrate Ms. Breidenbach's conduct that merits an award of punitive damages.

¹ The Request for Admission includes a definition of electronic device: "[a]n electronic device includes but is not limited to cellular devices, radio, G.P.S., DVD player, gaming system, etc."

Punitive damages are not recoverable in a tort action unless the actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud. *Simpkins v. Grace Brethren Church of Delaware*, 2014-Ohio-3465, 16 N.E.3d 687, ¶ 87 (5th Dist.) Here, Plaintiff's request for punitive damages is premised on the possibility that Ms. Breidenbach was using an electronic device, or was otherwise distracted, immediately before the accident occurred. The Court notes that although Defendants have not submitted an abundance of evidence in support of their motion, Ms. Breidenbach's denial provided the Plaintiff with a meaningful opportunity to respond. Further, the denial is "some evidence" which indicates Ms. Breidenbach was not using an electronic device prior to the accident. Civ. R. 56(C). Therefore, because Defendants have submitted evidence that Ms. Breidenbach was not using an electronic device leading up to the crash, and therefore did not commit actions that demonstrate malice or aggravated or egregious fraud, the burden has shifted to Plaintiff to set forth specific facts showing that there is a genuine issue relating to her claim for punitive damages, which she has not done. The Court finds there are no genuine issues of material fact relating to Plaintiff's claim for punitive damages, and therefore GRANTS Defendants' Motion for Partial Summary Judgment on the issue of punitive damages.

IT IS SO ORDERED



Judge Richard E. Berens

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