

Circuit Court for Frederick County
Case No. C-10-CV-20-000254

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 170

September Term, 2021

KASSONDRA TOPPER

v.

JOHN C. THOMAS, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
LYNWOOD SAMUEL STRIDE

Graeff,
Friedman,
Ripken,

JJ.

Opinion by Friedman, J.

Filed: January 4, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Kassondra Topper appeals the grant, by the Circuit Court for Frederick County, of a motion for summary judgment in favor of appellee John C. Thomas, as special administrator of the estate of Lynwood Samuel Stride, and the denial of her cross-motion for summary judgment. Topper presents the following questions for our review:

1. Did the trial court err in applying the firefighter’s rule and barring Deputy Topper’s claim against the Stride estate because it found that her injury was foreseeable and related to the reason for which she was called to the scene of the prior collision?
2. Did the trial court err in denying Deputy Topper’s motion for summary judgment on the issue of Mr. Stride’s negligence?

For the reasons that follow, we affirm the trial court’s award of summary judgment.

BACKGROUND

While on routine patrol duty on February 11, 2017, Topper, a deputy with the Frederick County Sheriff’s Office, responded to the scene of a minor motor vehicle collision in Emmitsburg, Maryland. When Deputy Topper arrived at the scene, she learned that a vehicle operated by Lynwood Stride had struck another vehicle in the rear. Stride accepted responsibility for the accident, explaining to Deputy Topper that he had been in a hurry.

Because Stride’s vehicle was blocking another motorist from exiting a parking lot, Deputy Topper instructed Stride to move his vehicle forward. Stride returned to his vehicle, started it, and began revving the engine. Then, although Deputy Topper put her hands up and shouted at him not to move because the car directly in front of him had not yet pulled away, Stride “suddenly moved forward, lost control.” To avoid colliding with the car still in front of him, Stride “jerked the wheel” to the left, towards Deputy Topper. He

accidentally struck Deputy Topper with his vehicle, causing injury to her neck and left hand, arm, and shoulder. Deputy Topper later underwent shoulder surgery and was unable to return to work for several months.¹

Deputy Topper filed a complaint against John C. Thomas, as special administrator of Stride’s estate, alleging a single count of negligence.² During discovery, Deputy Topper was deposed. She explained that when responding to a motor vehicle collision, “it was part of [her] job duties at the scene of an incident to control the traffic and make sure that everything was safe between the vehicles that [she] was directing.” She also agreed that “getting [Stride] to move forward was part of normal accident scene investigation, moving traffic to accommodate other people[.]”

Following the completion of discovery, Stride’s estate moved for summary judgment, asserting that there was no dispute of material fact and that the firefighter’s rule barred Deputy Topper’s recovery of damages because she was acting within the scope of her employment when she was injured.³ Deputy Topper filed a cross-motion for summary judgment, contending that Stride was negligent as a matter of law and that the firefighter’s rule did not apply.

¹ Deputy Topper received a workers’ compensation award covering the time period of June 28, 2017 through September 23, 2017.

² In July 2019, Stride died of causes unrelated to the 2017 accident. Thomas was appointed special administrator of Stride’s estate in April 2020.

³ The firefighter’s rule has also been held to be applicable to police officers. *See Sherman v. Suburban Trust Co.*, 282 Md. 238, 244-46 (1978); *Flood v. Attsgood Realty Co.*, 92 Md. App. 520, 526-27 (1992).

The trial court issued a written opinion, finding that there were no material facts in dispute and that the firefighter’s rule precluded Deputy Topper from recovering damages from Stride’s estate. The court reasoned that Deputy Topper responded to a vehicle collision involving Stride and was injured “by the very same party who occasioned her presence at the scene.” In addition, Deputy Topper had acknowledged, during her deposition, that at the time she was struck she was engaged in her official duties of investigating a vehicle collision, which included controlling the traffic, clearing the intersection, and advising the drivers to move their vehicles. Because the accident that caused Deputy Topper’s injuries occurred during the incident that required her presence at the scene and was not a separate unforeseeable event unrelated to the underlying call for service, the trial court concluded that the “incident falls squarely within the [Firefighter’s] Rule.”

The trial court ruled that Thomas was entitled to judgment as a matter of law and, as a result, it was unnecessary to address the issue of liability raised in Deputy Topper’s cross-motion for summary judgment. In its order, the court granted Thomas’s motion for summary judgment with prejudice, entered judgment in his favor, and denied Deputy Topper’s cross-motion for summary judgment. Deputy Topper noted this timely appeal.

DISCUSSION

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. MD. R. 2-501(f). We review the trial court’s record “in the light most favorable to the non-moving party,” and we will “construe any reasonable inferences which may be drawn from the facts

against the [moving party].” *Livesay v. Baltimore Cnty.*, 384 Md. 1, 10 (2004). Because the questions posed by a motion for summary judgment are questions of law, we review a trial court’s decision to grant summary judgment without deference. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558 (2020). The question of whether the firefighter’s rule applies is a question of law for the judge. *Shastri Narayan Swaroop, Inc. v. Hart*, 158 Md. App. 63, 74 (2004).

Here, the propriety of the trial court’s ruling on Thomas’s motion for summary judgment turns on the applicability of the firefighter’s rule to the facts of the matter. The firefighter’s rule, as a matter of public policy, “generally precludes police officers and firefighters injured in the course of their duties from suing those whose negligence necessitated the public safety officers’ presence at the location where the injury occurred.” *White v. State*, 419 Md. 265, 267-68 (2011); *Flowers v. Rock Creek Terrace Ltd. Partnership*, 308 Md. 432, 447 (1987). In other words, the very nature of the police officer’s or firefighter’s occupation limits their ability to recover in tort for work-related injuries. *Flowers*, 308 Md. at 447-48.

For example, in *Hart v. Shastri Narayan Swaroop, Inc.*, 385 Md. 514, 534 (2005), the Court of Appeals held that the firefighter’s rule barred a firefighter’s suit against a motel owner for injuries the firefighter suffered when he fell down a negligently unguarded stairwell while navigating through heavy smoke in an attempt to gain access to the second floor of the building. The Court “quickly dispose[d] of” Hart’s contention that his injury occurred after the initial period of his anticipated occupational risk, explaining that Hart’s

injuries occurred when he “was unquestionably in the process of performing the duty for which he was ordered—to rescue any motel patrons trapped by the fire.” *Id.* at 525.

The Court added:

When a firefighter enters upon property for the purposes of fighting a fire, [they] must generally bear the risk of being injured by causes relating to or arising out of the fire. Hart’s inability to perceive an open stairwell before him as he made his way to the motel building was *directly related* to smoky conditions from the fire itself.

Id. at 529 (emphasis in original). The *Hart* Court made clear that the firefighter’s rule applies whenever the firefighter or police officer is injured by the risks “of [their] inherently dangerous occupation” of firefighting and law enforcement, so long as the risks are “directly related to” the situation requiring the firefighter’s or police officer’s services. *Id.* at 534, 529.

A firefighter’s or police officer’s occupation, however, does not involve “facing unlimited risks on behalf of the public[.]” *Flowers*, 308 Md. at 442 (citing *Aravanis v. Eisenberg*, 237 Md. 242, 252 (1965)). The firefighter’s rule does not apply “when the fire[fighter] sustains injuries after the initial period of ... anticipated occupational risk, or from perils not reasonably foreseeable as part of that risk.” *Flowers*, 308 Md. at 448 (quoting *Aravanis*, 237 Md. at 252).

In *Schreiber v. Cherry Hill Const. Co., Inc.*, 105 Md. App. 462 (1995), for instance, Schreiber, a Maryland State Trooper, responded to the scene of a motor vehicle collision at a construction site on I-695. Another trooper had set up “a flare line to provide a zone of safety for rescue personnel.” *Id.* at 468. When a driver unrelated to the initial collision saw

the flares and tried to slow her vehicle, she lost control and struck Schreiber—who was within the safety zone—causing serious injuries to the trooper. *Id.*

Cherry Hill Construction, the contractor who was undertaking construction at the location of the collisions, maintained that Schreiber could not recover tort damages because her injuries resulted from “the negligently created risk that was the very reason for her presence on the scene in [her] occupational capacity.” *Id.* at 474 (quoting *Flowers*, 308 Md. at 447-48).

This Court explained, however, that Schreiber had proceeded to Cherry Hill’s construction site to investigate an automobile accident and that during that investigation, a vehicle unrelated to that accident struck her. Schreiber did not allege that her injuries resulted from negligence associated with the automobile accident that she had been investigating; rather, she alleged that her injuries resulted from the unforeseeable risk of another driver’s negligent driving and Cherry Hill’s negligent supervision of the road construction site. *Id.* at 474. Schreiber averred that while performing her job duties within the safety zone, she could not reasonably have anticipated that another driver would come into the safety zone and hit her. *Id.* Because Schreiber sustained injuries from “perils not reasonably foreseeable as part of her occupational risk,” *id.*, we held that the firefighter’s rule did not bar her from recovering tort damages. *Id.* at 475.

Although Deputy Topper cites *Schreiber* in support of her argument that the firefighter’s rule should not bar her negligence claim, the two cases are distinguishable. Here, when Deputy Topper arrived at the scene of the motor vehicle collision, it was her duty to investigate the cause of the accident, and that duty included facilitating the

exchange of information between the involved drivers and ensuring the safety of the scene by directing, moving, and controlling the traffic to accommodate other drivers. In fact, she acknowledged that during her deposition. She was therefore required to bear the risk of being injured by causes related to or arising out of the initial collision.

Despite her claim that the accident that caused her injuries was independent of the accident requiring her services, we disagree. In our view, Deputy Topper was “injured by the negligently created risk that was the very reason for h[er] presence on the scene in h[er] occupational capacity.” *Flowers*, 308 Md. at 447-48. In other words, her injury occurred when she “was unquestionably in the process of performing the duty for which [s]he was ordered[.]” *Hart*, 385 Md. at 525.

Sustaining injury after directing the driver of a car damaged during a motor vehicle collision—which was blocking other vehicles from accessing the public road—to move his vehicle falls squarely within the range of hazards that police officers are expected to confront in the course of their duties on behalf of the public. *See, e.g., Crews v. Hollenbach*, 358 Md. 627, 653 (2000) (“[A] firefighter who is injured by a risk inherent in the task of firefighting may be barred from asserting claims for those injuries because it is the firefighter’s duty to deal with fires and [they] cannot recover damages caused by the reason that made [the] employment necessary.”). The possibility of injury from the movement of the vehicle involved in the initial accident away from the lanes of travel was reasonably foreseeable as part of Deputy Topper’s occupational risk in investigating a motor vehicle collision.

We conclude that the firefighter’s rule applies to bar Deputy Topper’s negligence claim. The trial court was therefore correct in granting Thomas’s motion for summary judgment and in denying Deputy Topper’s cross-motion.

**ORDER OF THE CIRCUIT COURT
FOR FREDERICK COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**