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COMMONWEALTH OF KENTUCKY
19TH JUDICIAL CIRCUIT
FLEMING CIRCUIT COURT
CASE NO. 19-CI-00042

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JOSE MATTHEW PRESLEY
and
KRISTINA PRESLEY

PLAINTIFFS

vs. Order Granting Directed Verdict

JOHN VICE, in his individual capacity,
and in his capacity as an employee of the
Fleming County Board Of Education;
FLEMING COUNTY BOARD OF EDUCATION;
BRIAN CREASMAN, in his individual capacity,
and in his capacity as the School District
Superintendent and employee of the Fleming
County Board Of Education
and
UNKNOWN EMPLOYEES OF THE FLEMING COUNTY
BOARD OF EDUCATION

DEFENDANTS

This matter came before this Court for a scheduled jury trial which began on Monday, 4/15/2024. The Plaintiff concluded the presentation of its case and rested at 10:35a.m. on Wednesday, 4/17/2024. The jury was then excused from the courtroom. Defense counsel then presented its motion seeking a directed verdict for all party defendants and Plaintiff's counsel responded thereto. The basis for Defendant's motion, as

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well as Plaintiff's response, being fully contained in this Court's audio/video record of the proceedings herein. The Court then called a recess for lunch, to reconvene at 12:30p.m. after the Court had an opportunity to review the file and applicable case law regarding the motion seeking directed verdict.

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The Court having carefully considered the motion, and being otherwise sufficiently advised, rules as follows:

1. First, as to the Defendant, Fleming County Board Of Education, Plaintiff's counsel stated on the record that they had no objection to defense counsel's motion seeking a directed verdict. There being no objection, the defense motion seeking a directed verdict for the Fleming County Board Of Education is now GRANTED/SUSTAINED.

2. Second, as to the Defendant, Brian Creasman, who was sued in both his official capacity as Superintendent of the Fleming County School System and individually, the defense motion seeking a directed verdict is also GRANTED/SUSTAINED. The Court specifically finds that there was no evidence presented that Mr. Creasman, either as superintendent, or individually, violated any of his statutory and/or regulatory duties which then resulted in the tragic accident that is the basis of the Plaintiff's claim. There is no evidence that Mr.

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Creasman was, in any way, deficient in the hiring, training, retention, and/or supervision of the defendant bus driver, John

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Vice. As to that issue, the evidence shows:

- a. Mr. Creasman was not the superintendent when Mr. Vice was hired.
- b. Mr. Vice received yearly training as required by the Kentucky Department Of Education.
- c. That as of the date of the accident in 2018 Mr. Vice was a 17+ year veteran bus driver with no record of any accidents and having had only one incident where a bus mirror had been knocked off by another vehicle.
- d. That Mr. Vice was retained and continued to work as a bus driver for the district after the accident and up until his retirement in December of 2023.
- e. That Mr. Vice's supervisor testified that the school district had never received any complaints regarding Mr. Vice's abilities and/or activities in driving the school bus.

The mere occurrence of an accident involving a school bus does not automatically somehow invoke liability, either officially or personally, for the school superintendent, and the facts as presented in the Plaintiff's case in chief are not found to rise to the level required to invoke such liability in this case. That is why the Court has granted/sustained the motion seeking directed verdict as to the Defendant, Brain Creasman, both in his official and individual capacities.

3. Third, the question of directed verdict as to the defendant bus driver, John Vice, is somewhat more involved than

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the other defendants herein. Mr. Vice was the operator of the school bus involved in the wreck. Thankfully he had, at the time of the accident, already dropped off all of the children at school and he was on his way back home. He was travelling on Energy Road in Fleming County, Kentucky, which is, undisputedly, a narrow rural roadway with no centerline and therefore no defined lanes of travel. It is undisputed in this case that "at the time of collision" the Plaintiff's vehicle was "on the wrong side of the road". Wright v. Carroll, 452 S.W.3d 127, 132-133 (Ky. 2014). Such fact situation "constitutes prima facie proof of negligence" on the part of the Plaintiff in this case and "to avoid liability in that kind of situation, such driver must show his negligence did not put him there". Id., quoting from Mulberry v. Howard, 457 S.W.2d 827, 829 (Ky. 1970); and see also Gross v. Barrett, 350 S.W.2d 457 (Ky. 1961); and all the other cases as cited in Wright regarding this issue.

In such an instance, as presented in this case, the Plaintiff has the "obligation to go forward and to explain the reason for being on the wrong side of the road", and "cannot satisfy this burden by claiming.....an emergency situation that was created by his own negligence". Wright, supra at 133, quoting from Rabold v. Gonyer, 148 S.W.2d 728, 731 (1941). Kentucky Courts have further stated "a court should have no hesitancy in granting a directed verdict.....when a driver causes a

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collision on the wrong side of the road without justification".

Wright, supra at 133, quoting Davis v. Kunkle, 194 S.W.2d 513,

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514 (Ky. 1946).

In the facts presented in this case the Plaintiff does NOT have the ability and/or right to present any "sudden emergency" defense as to his being in the wrong lane of traffic, because his "presence in the wrong lane is (was) brought about by his own negligence". Paducah Area Public Library v. Terry, 655 S.W.2d 19, 22 (Ky. App. 1983). Further, "our courts have recognized that the presence of other vehicles in one's lane of travel could conceivably create an emergency for a driver that would justify a sudden emergency qualification of the driver's duty of care. Regenstreif v. Phelps, 142 S.W.3d 1 (Ky. 2004). However, in such instance "the obligation to obey a specific duty (i.e. staying in your own lane of travel) may yield, but only where the driver invoking the doctrine has not caused the emergency to arise. Henson v. Klein, 319 S.W.3d 413, 422 (Ky. 2010).

In the facts presented in Plaintiff's case in chief, it is undisputed that Plaintiff's counsel admitted to the jury in opening argument that Plaintiff has fault to be apportioned to him in this accident. Further, Plaintiff's own expert testified:

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- that the roadway was wet, and Plaintiff was navigating a curve just prior to the accident that he could not see around
- that Plaintiff was travelling 8 to 10 miles per hour too fast for the conditions
- that Plaintiff chose to swerve to his left which resulted in impact with the front passenger side of the school bus
- that at no point until impact with the school bus on the school bus's side of the roadway, can Plaintiff's expert testify and/or determine the path of travel of Plaintiff's vehicle within the roadway
- Further testimony in the case revealed that the Plaintiff travelled this roadway often and therefore would have known of his inability to see around the curve he unquestionably entered at an excessive speed as verified by his vehicles "black box", as examined and the data contained therein testified to by Plaintiff's expert

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In short, Plaintiff's own expert refutes any claim as to "sudden emergency" since the Plaintiff was operating his vehicle negligently prior to his collision with the school bus.

WHEREFORE, the Defendant's motion seeking a directed verdict as to the defendant bus driver, John Vice, is GRANTED/SUSTAINED. This judgment was read in open court without the jury present. The jury was then called back into the courtroom; counsel was asked if they had any questions/motions before releasing the jury; and all counsel responded in the negative. The jury was then released, and the case was concluded.

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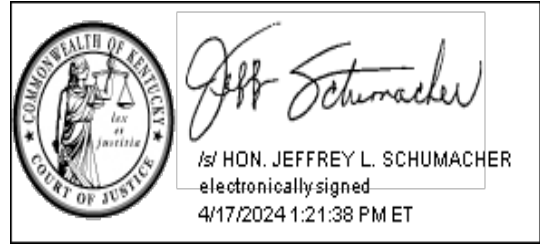
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This is a final and appealable order and judgment,
there being no just cause or reason for delay.

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SO ORDERED this 17th DAY OF APRIL 2024.



JEFFREY L. SCHUMACHER
JUDGE - FLEMING CIRCUIT COURT

CLERK'S CERTIFICATION

I hereby certify that a true copy of the foregoing was efiled and or mailed, postage prepaid, to the following:

Hon. Megan Hughes Richmond
Richardson, Barber & Williamson
126 West Main St.
Mt. Sterling, Ky 40353

Hon. Gregg E. Thornton
Hon. Jillian House
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Lexington, Ky 40507

Hon. Kaye L. Leighton
Patrick & Leighton
25 W. Main St.
Mt. Sterling, Ky 40353

Hon. John G. McNeill
Landrum & Shouse
P.O. Box 951
Lexington, Ky 40588

All on this _____ day of April 2024.

FLEMING CIRCUIT CLERK - Amy Saunders

BY: _____ D.C.