DOCKET NO. CV09-5033767-S	:	SUPERIOR COURT
SIENA DUDLEY, ADMINISTRATRIX	:	J.D. OF HARTFORD AT HARTFORD
V.		
CITY OF HARTFORD,	:	JULY 24, 2013

MEMORANDUM OF DECISION

Introduction

This is an action instituted by the plaintiff, Siena Dudley, Administratrix of the Estate of Chad Adgers, her son, against the defendants City of Hartford, former Police Chief Daryl K. Roberts and Hartford Police Officer James A. Rutkauski. The action arises out of the tragic death of Chad Adgers as a result of the crash of a Dodge Caravan, in which he was a passenger, while its driver was attempting to evade pursuit by the police. The action is in six counts. The First Count alleges negligence by Officer Rutkauski. The Second Count alleges negligence by the City of Hartford in breaching or mis-performing the ministerial duties imposed on the City and Officer Rutkauski pursuant to the City's pursuit policy. The Third Count alleges negligence by former Hartford Police Chief Daryl K. Roberts in that he allowed employees under his supervision to engage in negligent conduct. The Fourth Count alleges recklessness by Officer Rutkauski. The Fifth Count alleges a breach of contract by the City of Hartford. The Sixth Count seeks statutory indemnification pursuant

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to Connecticut General Statutes § 7-465.

Summary judgment was entered in favor of the defendants on the Third and Fifth Counts of the complaint. The court, *Sheridan, J.,* held that, as to the Third Count, Chief Roberts was entitled to governmental immunity and that the City of Hartford was entitled to summary judgment on the claim for "breach of contract" in the Fifth Count. As to the First, Second, Fourth, and Sixth Counts, the court denied summary judgment noting that "Officer Rutkauski's decision to initiate pursuit of the Caravan was discretionary in nature and therefore any claims of negligence pertaining to that decision are afforded immunity. But the manner in which Rutkauski then chose to follow or pursue the van is a ministerial act in which he is obliged to act in such a way as to not endanger life or property by doing so or to operate his vehicle with due regard for the safety of all persons and property."

Trial to the court was held on January 8, 9, 10, 11, 15, 16, and 17th. At that time the court heard testimony from Hartford Police Officer James Rutkauski; Tyrone Mercer, Jacquelle Underwood, Dante James, all of whom were passengers in the Caravan; Hartford Police Sergeant Michael Thomas Kot; Hartford Police Officer Robert Shelby; retired Hartford Police Lieutenant Patrick Jobes; Lance Lusignan, protective services manager for the Wadsworth Atheneum; Jeffrey Noble, a police consultant; West Hartford Police Detective Michael Chauvin, who was lead

investigator on the crash; Gary Crakes, an economist; She-heim Collier, the driver of the Caravan; James Griffin, the director of public safety for Capital Community College; Jennifer Martinez, a Hartford Police dispatcher; Michael A. Nichols, a tow truck operator, Roscoe Lamar, Jr. and Roderick Burgess, City of Hartford street sweepers, all of whom witnessed the crash; Dr. Leonard Freifelder, a forensic economist; and the plaintiff, Siena Dudley. Post trial briefs were filed on March 18, 2013 and final arguments were heard on April 2, 2013.

Findings of Fact

The plaintiff has alleged in her Amended Complaint dated September 21, 2012, a number of facts which have been admitted by the defendants. They are: "On June 5, 2008, and at all times herein relevant, Chad Adgers was 14 years of age and died after riding as a passenger in a 1993 Dodge Caravan, operated by 17 year old Sheheim Collier, in the City of Hartford, County of Hartford, State of Connecticut." *(Paragraph 1).* " At all times relevant herein, the Defendant City of Hartford (hereinafter referred to as 'Defendant City') is, and has been, a municipal corporation organized under the laws of the State of Connecticut, Connecticut General Statutes §7-148." *(Paragraph 2).* "Beginning at approximately 10:00 p.m. on June 4, 2008, and ending at approximately 3:38 a.m. on June 5, 2008, the aforementioned 1993 Dodge Caravan was operated on

various streets in different sections of the City of Hartford. *(Paragraph 9)*. "At some point between 3:30 a.m. and 3:38 a.m. on June 5, 2008, a Hartford police cruiser operated by Defendant Rutkauski was patrolling in the south part of Hartford on Benton Street when he observed the aforementioned 1993 Dodge Caravan traveling South on Franklin Avenue." *(Paragraph 11)*. "Defendant Rutkauski observed that the aforementioned 1993 Dodge Caravan appeared to be traveling at an accelerated speed." *(Paragraph 12)*. "Defendant Rutkauski, while following behind the aforementioned 1993 Dodge Caravan in the area of Franklin Avenue and Preston Street activated the emergency lights and siren on the police cruiser in an effort to stop said Caravan." *(Paragraph 14)*. "The aforementioned 1993 Dodge Caravan continued to travel south on Franklin Avenue after Defendant Rutkauski activated the cruiser's lights and siren." *(Paragraph 15)*. "The aforementioned 1993 Dodge Caravan proceeded to the intersection of Franklin Avenue and Brown Street, traveled through a red traffic control signal without stopping and crossed the center line heading east onto Brown Street." *(Paragraph 16)*. "The aforementioned 1993 Dodge Caravan accelerated from Defendant Rutkauski's position and at the intersection of Brown Street and Wethersfield Avenue, the aforementioned 1993 Dodge Caravan traveled through a red traffic control signal and turned north onto Wethersfield Avenue." *(Paragraph 17)*. "The aforementioned 1993 Dodge Caravan continued to accelerate away from Defendant Rutkauski's position crossing back and forth over the double yellow line as it

traveled north." *(Paragraph 18)*. "Defendant Rutkauski continued to follow the vehicle." *(Paragraph 19)*. "Notwithstanding the fact the aforementioned 1993 Dodge Caravan continued to accelerate speed north on Wethersfield Avenue merging onto Main Street, Defendant Rutkauski continued to follow the vehicle with emergency lights activated and siren blaring." *(Paragraph 20)*. "The aforementioned 1993 Dodge Caravan was captured on video on June 5, 2008, northbound on Main Street passing 600 Main Street, Hartford, Connecticut, at 3:34 and 39 seconds." *(Paragraph 22)*. "The aforementioned video also captured a Hartford police cruiser operated by Defendant Rutkauski in the same area of 600 Main Street, Hartford, Connecticut, approximately 10 seconds later at 3:34 and 49 seconds." *(Paragraph 23)*. "On June 5, 2008, the aforementioned 1993 Dodge Caravan traveled at an average speed of 100.25 miles per hour between the intersections of Main Street and Sheldon Street to the intersection of Albany Avenue and Main Street, some 4561 feet." *(Paragraph 24)*. "The minor child Chad Adgers was a backseat passenger and died as a result of the aforementioned crash." *(Paragraph 26)*. "At all times relevant herein, Defendant City and the Hartford Police Department had adopted a Uniform Statewide Pursuit Policy pursuant to Connecticut General Statutes 14-283a-1 to 14-283-4 of the Regulations of Connecticut State Agencies." *(Paragraphs 30 and 42)*.

The defendants also pled a number of special defenses to the plaintiff's complaint. The City

and Police Chief Daryl Roberts, as well as Officer Rutkauski, filed apportionment complaints against She-heim Collier.

In addition to the facts admitted by the parties, the court finds the following facts from the evidence presented: The City of Hartford, as required by statute, General Statutes §14-283a[1], has

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[1] That statute provides: " (a) As used in this section, 'police officer' means a sworn member of an organized local police department or a state police officer, which member or officer is assigned to patrol duties on public streets or highways, and 'pursuit' means an attempt by a police officer in an authorized emergency vehicle to apprehend any occupant of another moving motor vehicle, when the driver of the fleeing vehicle is attempting to avoid apprehension by maintaining or increasing the speed of such vehicle or by ignoring the police officer's attempt to stop such vehicle. (b) The Commissioner of Emergency Services and Public Protection, in conjunction with the Chief State's Attorney, the Police Officer Standards and Training Council, the Connecticut Police Chiefs Association and the Connecticut Coalition of Police and Correctional Officers, shall adopt in accordance with chapter 54 a uniform, state-wide policy for handling pursuits by police officers. Such policy shall specify: (1) The conditions under which a police officer may engage in a pursuit and discontinue a pursuit, (2) alternative measures to be employed by any such police officer in order to apprehend any occupant of the fleeing motor vehicle or to impede the movement of such motor vehicle, (3) the coordination and responsibility, including control over the pursuit, of supervisory personnel and the police officer engaged in such pursuit, (4) in the case of a pursuit that may proceed and continue into another municipality, (A) the requirement to notify and the procedures to be used to notify the police department in such other municipality or, if there is no organized police department in such other municipality, the officers responsible for law enforcement in such other municipality, that there is a pursuit in progress, and (B) the coordination and responsibility of supervisory personnel in each such municipality and the police officer engaged in such pursuit, (5) the type and amount of training in pursuits, that each police officer shall undergo, which may include training in vehicle simulators, if vehicle simulator training is determined to be necessary, and (6) that a police officer immediately notify supervisory personnel or the officer in charge after the police officer begins a pursuit. The chief of police or Commissioner of Emergency Services and Public

a pursuit policy. That policy provides, in part,: "Police vehicle pursuits may be initiated when: a. The primary police unit is in close proximity to the fleeing vehicle, and b. the officer has reasonable cause to believe that the operator and/or occupant(s) he/she is attempting to stop have committed, are about to, or are threatening to commit a felony, or c. the officer has reasonable cause to believe that the driving ability of the operator that he/she is attempting to stop is so impaired as to cause the death of or serious injury to another person(s)." *(Exhibit 17, p.2)*. It also provides that: "The police officer serving as the Primary Unit engaged in the pursuit shall, continually re-evaluate and assess the pursuit situation, including all of the initiating facts. The Primary Unit shall terminate the pursuit whenever he or she reasonably believes that the risks associated with the continued pursuit are greater than the public safety benefit of making an immediate apprehension. The Primary Unit may terminate the pursuit at any time." *(Exhibit 17, p.5)*. General Statutes §14-283 also provides, in part, that: "(a) 'Emergency vehicle', as used in this section, means . . any state or local police vehicle operated by a police officer . . . in the pursuit of fleeing law violators . . .(b) The operator of any emergency vehicle may (1) park or stand such vehicle, irrespective of the provisions of this chapter,

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Protection, as the case may be, shall inform each officer within such chief's or said commissioner's department and each officer responsible for law enforcement in a municipality in which there is no such department of the existence of the policy of pursuit to be employed by any such officer and shall take whatever measures that are necessary to assure that each such officer understands the pursuit policy established."

(2) proceed past any red light or stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle, (3) exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a or 14-219 as long as such operator does not endanger life or property by so doing, and (4) disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions. (c) The exemptions herein granted shall apply only when an emergency vehicle is making use of an audible warning signal device, including but not limited to a siren, whistle or bell . . . and visible flashing or revolving lights . . . and to any state or local police vehicle properly and lawfully making use of an audible warning signal device only. (d) The provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property. . ."

On June 5, 2008 at about three o'clock in the morning, Officer Rutkauski of the Hartford Police Department observed a vehicle of a type which is frequently stolen speeding on Franklin Avenue. He attempted to pull the vehicle over, but it did not stop. He then initiated a pursuit of the vehicle. Six persons were in the car, all thirteen to seventeen years old, just joy riding. The people in the van were nervous when the police started following them. The unlicensed driver of the vehicle, She-heim Collier, was scared because he had been told that the vehicle was stolen. Collier then increased speed and went through a red light without stopping and headed east on Brown Street.

He drove the vehicle back and forth across the double yellow lines and turned north on Wethersfield Avenue merging north on Main Street. The driver continued through red lights without stopping and swerved back and forth across the yellow lines. He thought he could get away from the police despite the occupants of the van shouting for him to stop and pull over. He admitted he could have stopped the vehicle in response to the police pursuit. In accordance with the pursuit policy, Officer Rutkauski called a dispatcher who asked what the pursuit was for and Officer Rutkauski said "reckless driving." Officer Rutkauski was then told to terminate the pursuit, since it was just for a motor vehicle violation, which he did at Main and Sheldon Streets. He terminated the pursuit by slowing down and turning off his flashing lights and siren. The video mentioned in the complaint, from a surveillance camera on the Wadsworth Atheneum, which is north of the intersection of Main and Sheldon Streets, clearly shows the police cruiser without its flashing lights on. During the pursuit, the Caravan reached speeds of 90 to 100 miles per hour. The vehicle was able to pull away from the police cruiser. When the pursuit was terminated the van was 500 to 1000 feet ahead of the police cruiser. The pursuit lasted for approximately two and a half minutes. Although Officer Rutkauski terminated the pursuit he continued to follow the vehicle north on Main Street because he was concerned it might be involved in an accident but lost sight of the vehicle at some point. At the intersection of Main Street and Albany Avenue Officer Rutkauski continued to travel on Albany

Avenue. It is consistent with the City's pursuit policy for a police officer to still follow a vehicle even after a pursuit has been called off. After Officer Rutkauski lost sight of the van, it continued on Main Street. Almost a mile after the pursuit was terminated at the intersection of Main and Sheldon Streets, the Dodge Caravan crashed. Based on the distance the van covered in the time between when the pursuit was terminated and when it was reported to have crashed, approximately 31.02 seconds, the van had continued to travel at a high rate of speed, estimated to average 100 miles per hour. When the vehicle reached the intersection of Main Street and Albany Avenue the driver attempted to bear right to continue on Main Street but lost control, crossing over the median into the southbound lanes of Main Street, contacting a fire hydrant and utility pole and coming to rest in the southbound lane of Main Street. None of the witnesses to the crash saw a police cruiser in the vicinity when the crash occurred. Collier, in a statement to the police on July 3, 2008 said that "[w]hen we got to the north end, I saw the cops weren't chasing us anymore." *(Exhibit 7)*. Collier saw a police car behind him about a block away on Main Street just before the crash. There were also a tow truck and street sweepers in that area which displayed flashing lights. Several of the occupants of the van fled the scene. The tow truck operator called 911 and reported the crash at 3:38 a.m. Police arrived at the scene approximately one to four minutes after the crash. Tragically, the plaintiff's son, Chad Adgers, fourteen years old, suffered fatal injuries as a result of the crash and was

pronounced dead at 4:34 a.m. on June 5, 2008. Collier subsequently pled guilty to misconduct with a motor vehicle in connection with the crash.

Discussion

Burden of Proof

The plaintiff has the burden of proving her claims by a preponderance of the evidence. She sustains that burden if " the evidence, considered fairly, induces in the trier's mind reasonable belief that it is more probable than otherwise that the fact or issue is true." (Internal quotation marks and citation omitted.) *Holmes v. Holmes*, 32 Conn. App. 317, 318, cert. denied, 228 Conn. 902 (1983). "The general burden of proof rests upon the plaintiff in civil actions. . . . The defendant's failure to present any evidence in contradiction of that offered by the plaintiff gives no support to the claim that the truth of all the essential allegations of the complaint was established. A plaintiff prevails not by reason of the weakness of the defendant's case but because of the strength of his own. . . The plaintiff in a civil case sustain[s] his burden of proof as to any essential element in his cause of action if the evidence, considered fairly and impartially, induce[s] in the mind of the trier a reasonable belief that it [is] more probable than otherwise that the facts involved in that element [are] true." (Internal quotation marks and citations omitted.) *Suresky v. Sweedler*, 140 Conn. App. 800, 807 (2013).

Immunity of Municipal Employees and Municipalities

The defendants in this case are a municipality and its employee. As such, they enjoy certain immunities from liability.

"The [common-law] doctrines that determine the tort liability of municipal employees are well established. . . . Generally, a municipal employee is liable for the misperformance of ministerial acts, but has a qualified immunity in the performance of governmental acts. . . . Governmental acts are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature. . . . The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, [m]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion. . . .Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Discretionary act immunity reflects a value judgment that — despite injury to a member of the public — the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by the fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. . . . In contrast, municipal officers are not immune from liability for negligence arising

out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion. . . . This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts. . . .The tort liability of a municipality has been codified in § 52-557n. Section 52-557n (a) (1) provides that [e]xcept as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties. . . . Section 52-557n (a) (2) (B) extends, however, the same discretionary act immunity that applies to municipal officials to the municipalities themselves by providing that they will not be liable for damages caused by negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law. . . ." (Internal quotation marks omitted.) *Faulkner v. Daddona*, 142 Conn. App. 113, 119-20 (2013).

The defendants claim that they are entitled to judgment based on governmental and qualified immunity because such immunity is afforded to a claim of negligence in the performance of a discretionary function.

Discretionary and Ministerial Acts

The defendants claim that in light of the ruling on the motion for summary judgment the decision to initiate the pursuit was discretionary and they are immune from liability for that decision. The plaintiff argues that this court should revisit the determination of the court on the motion for summary judgment that Officer Rutkauski's decision to initiate pursuit of the Caravan was discretionary rather than ministerial in nature. The court relied on the decision in *Vilton v. Burns*, Superior Court, Judicial District of Waterbury, Complex litigation Docket No. XO6CV00169481S (June 22, 2004, *Alander, J.)*. There the court stated: "The determination by a police officer whether to commence a high speed pursuit of a fleeing law violator is unquestionably a matter of judgment. It depends on a multitude of factors including the seriousness of the offense, the potential danger to the public of engaging in pursuit, the potential danger to the public of the suspects remaining at large and the surrounding conditions, including weather conditions, traffic conditions, road conditions and the condition of the vehicles. See, e.g., Uniform Statewide Pursuit Policy, Regs., Conn. State Agencies § 14-283a-4(a). . . Accordingly, it is a decision that is discretionary and for which governmental immunity applies. See *Docchio v. Bender*, Superior Court, judicial district of Waterbury, Docket No. CV98-0146014S (Aug. 15, 2002, *Holzberg, J.*); *Nunez v. VPSI, Inc.*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 97 0347902 (February 20, 2001,

Melville, J.); and *Boone v. Mills*, Superior Court, judicial district of Litchfield, Docket No. 0051318 (October 17, 1990, *McDonald, J.*). See also *County of Sacramento v.* Lewis, 523 U.S. 833, 853 (1998) ('A police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to all those within stopping range, be they suspects, their passengers, other drivers, or bystanders')." (Footnote omitted.) This court does not disagree with this analysis and cannot find that the initiation of a pursuit is a ministerial duty. Therefore as to the decision to initiate the pursuit, the defendants are entitled to qualified immunity.

However the court in *Vilton* did "concur with [the] line of cases [which hold] that the duty of a police officer to operate a police cruiser with due care and so as not to endanger the safety of others is a ministerial duty outside the ambit of governmental immunity." The court based this conclusion on the existence of the requirements in General Statutes §14-283 and the police department pursuit policies in that case regarding when and how a pursuit should be conducted. Consequently, the summary judgment court here held that the manner in which the pursuit was carried out involved a ministerial duty. Therefore it was the exercise of that duty that was the focus of the trial in this case.

Notwithstanding, this court believes that the court's conclusion in *Vilton* that how a pursuit

is conducted involves a ministerial rather than a discretionary duty may no longer be viable in light of recent Appellate Court decisions such as *Coley v. City of Hartford*, 140 Conn. App. 315 (2013) and *Faulkner v. Daddona*, 142 Conn. App. 113 (2013). In *Coley* the court stated: "While the threshold inquiry in determining whether a duty is ministerial or discretionary is whether there exists a directive compelling a municipality or its agent to act in a prescribed manner, the existence of such a directive alone is not necessarily sufficient to create a duty.. . . [T]he great weight of authority [states] that the operation of a police department is a discretionary governmental function." (Internal quotation marks and citations omitted.) *Coley v. City of Hartford*, 140 Conn. App. 315, 323 (2013).

The court noted that even where a statute imposes a duty on an officer to evaluate certain criteria in a situation, that does not mean that the implementation of that duty does not involve the use of discretion. The court noted: " Such considerations may lead officers with different training and experience to reach a wide range of reasonable conclusions rather than compelling them to reach a single, unavoidable conclusion dictating a clear course of action with fixed parameters that no officer would have had the discretion not to take. Such a duty is therefore not a ministerial duty, for violation of which a municipal official lacks qualified governmental immunity, and thus may lawfully be sued." *Id,* p. 326, n.10. Similarly, in *Faulkner v. Daddona*, 142 Conn. App. 113, 122 (2013), the court held that certain duties of a police officer were discretionary and not ministerial. There the

plaintiff, Patricia Faulkner, brought an action to recover damages for injuries she claims to have suffered in a motor vehicle accident when she was thrown off the back of a motorcycle. The plaintiff alleged that the accident occurred when, as she came upon the scene of a prior, unrelated motor vehicle accident to which Watertown Police Officer Conard had already responded, a tow truck suddenly pulled out onto and across the highway, blocking both lanes of travel causing the motorcycle to skid out of control and the plaintiff to be ejected from it onto the pavement. The plaintiff claimed that the town of Watertown and two of its employees, Officer Conard and police Chief John Gavallas, breached their duties to the plaintiff and other members of the public to properly secure the scene of the prior accident before the plaintiff came upon it and, more generally, to enforce certain town rules and regulations governing the performance of town towing services by private contractors. The court held that: "As for Conard's alleged failure to comply with certain provisions of the Watertown police department general orders, they also do not impose mandatory duties upon police officers to take particular action in all circumstances. No such provision prescribes the particular manner in which an officer must always secure an accident scene. This, of course, is because all accident scenes are different from one another, and in fact are so different as to require that different measures be taken to secure them. . . Consistent with this reality, even the general orders which the plaintiff claims to have been violated are replete with directives to officers to take

'appropriate' action, as 'necessary' or 'reasonable' in the attending circumstances, rather than prescribing a single, unalterable method for securing the scene. Such directives describe duties whose performance requires the exercise of judgment and discretion, for which the officer is entitled to governmental immunity." (Footnote omitted.)

"Police officers are protected by discretionary act immunity when they perform the typical functions of a police officer. . . The policy behind discretionary act immunity for police officers is based on the desire to encourage police officers to use their discretion in the performance of their typical duties. Discretionary act immunity reflects a value judgment that — despite injury to a member of the public — the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of secondguessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury." (Internal quotation marks and citation omitted.) *Smart v. Administrator*, 126 Conn. App. 788 800, cert. Denied, 301 Conn. 907 (2011).

Here the City's pursuit policy, both in setting forth the criteria for initiation of a pursuit and conducting a pursuit, use terms which clearly involve the use of discretion. The policy provides that the police offer engaged in a pursuit "re-evaluate and assess the pursuit situation" and terminate it "whenever he or she reasonably believes that the risks associated with the continued pursuit are

greater than the public safety benefit of making an immediate apprehension." Therefore this court concludes that both the initiation and conduct of the pursuit involved the exercise of discretion.

Even assuming that Officer Rutkauski's conduct of the pursuit involved a ministerial duty, the plaintiff claims the critical issue is whether he terminated the pursuit at Main and Sheldon Street. The court finds that the pursuit was terminated as soon as required by the policy. The policy required that Officer Rutkauski notify communications of the pursuit, which he did. Upon doing so he was directed by his supervisor to terminate the pursuit. The policy allows for termination of a pursuit by a supervisor. Officer Rutkauski then terminated the pursuit as ordered.

The plaintiff disputes that Officer Rutkauski terminated the pursuit when ordered to do so. Based on the facts found, this court concludes that he did. As noted above, the evidence established that: Officer Rutkauski was told by his supervisor to terminate the pursuit which he did at Main and Sheldon Streets. He terminated the pursuit by slowing down and turning off his flashing lights and siren. The video from the Wadsworth Atheneum, which is north of the intersection of Main and Sheldon Streets, clearly shows the police cruiser without its flashing lights on. None of the witnesses to the crash saw a police cruiser in the vicinity when the crash occurred. The driver of the van admitted that when they got to the north end the police weren't chasing them anymore. Although Officer Rutkauski may still have been attempting to follow the van at the time of the crash, he was

no longer engaged in a pursuit of it. The policy did not require that Officer Rutkauski not continue to follow the vehicle. Therefore the facts established by the evidence indicate that Officer Rutkauski complied with the pursuit policy in that he terminated the pursuit when directed to do so. Although Officer Rutkauski may have continued to follow the van, such was not prohibited by the policy. He subsequently lost sight of the van and the evidence established that he was not in pursuit of the van at the time that it crashed.

The plaintiff also claims that Officer Rutkauski was negligent in the manner in which he conducted the pursuit considering the requirements of the policy. The plaintiff argues that Officer Rutkauski was required to terminate the pursuit even before being ordered to do so because his re-evaluation of the reasons for initiating the pursuit would have required him to do so. As noted above, the policy requires the pursuing officer to "continually re-evaluate and assess the pursuit situation, including all of the initiating facts." In essence, the plaintiff claims that if Officer Rutkauski had done so he would have realized that his initial decision to engage in pursuit was in error and contrary to policy. However, as this court and the court on summary judgment has concluded, the decision to initiate the pursuit involves the exercise of discretion for which the officer has immunity. In any event, this court cannot determine that termination of a pursuit which lasted approximately two and an half minutes, earlier, where the vehicle the police officer was pursuing was traveling at speeds up

to 100 miles per hour would have effected in any way the outcome in this case.

Identifiable Victim

The plaintiff argues that even if the manner in which the pursuit was conducted involved discretion her decedent was an identifiable victim subject to imminent harm. Our courts have recognized certain exceptions to discretionary act immunity. Among those are that "liability may be imposed when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm. . . Discretionary act immunity is abrogated when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . By its own terms, this test requires three things: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm." (Footnote, internal quotation marks and citations omitted.) *Doe v. Petersen*, 279 Conn. 607, 616 (2006).

"The identifiable person subject to imminent harm exception to discretionary government immunity, as stated previously, is a narrow one whether a victim is claiming that he is within a foreseeable class of victims or whether he is claiming that he is a foreseeable victim, individually. [I]n addition to not recognizing any additional classes of foreseeable victims, the decisions [of our

Supreme Court] reveal only one case wherein a specific plaintiff was held potentially to be an identifiable victim subject to imminent harm for purposes of this exception to qualified immunity. See *Sestito v. Groton*, [178 Conn. 520, 522-23, 423 A.2d 165 (1979)] (facts presented jury question in case wherein on-duty town police officer watched and witnessed ongoing brawl in bar's parking lot but did not intervene until after participant had shot and killed plaintiff's decedent). *Sestito* appears, however, to be limited to its facts, as the remainder of the case law indicates that this exception has been applied narrowly, because [a]n allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm." (Internal quotation marks and citation omitted.) *Merritt v. Town of Bethel Police Department*, 120 Conn. App. 806, 815-6 (2010). This court is aware of no case where the court has held that the passengers in a vehicle fleeing from police have been found to be identifiable victims.

Even assuming that Officer Rutkauski was aware that there were occupants in the van and therefore, there may have been identifiable victims, including the decedent, the facts do not support the conclusion that the other criteria of the test have been met since he would not have been apparent to him that his conduct in initiating the police stop would cause the van driver to attempt to flee or that when the pursuit was stopped that the driver would continue to drive in a dangerous and reckless manner. It was reasonable for him to believe that the driver of the van would stop when he was

directed to do so or that he would slow down when the van was no longer being pursued. To conclude otherwise would require that police not stop alleged law violators for fear they will flee and subject others to harm as a result. This would defeat the policy behind discretionary act immunity stated in *Smart* to encourage police officers to "exercise judgment and discretion in their official functions, unhampered by fear of secondguessing and retaliatory lawsuits."

Proximate Cause

The defendants argue that even assuming their conduct was negligent, it was not the proximate cause of Adgers' death. The plaintiff argues that the "high speed, the driving through red lights, the driving across center lines, occurred only after the police pursuit began." *(Plaintiff's Trial Brief, p. 24).* She argues that consequently Officer Rutkauski's negligence was the proximate cause of Adgers' death. She cites the decision in *Tetro v. Stratford*, 189 Conn. 601 (1983) in support of her argument. However in that case the defendants did not challenge, on appeal, the jury's conclusion that their conduct was negligent. There the Court determined that the recklessness of the operator of a car being pursued by the police did not relieve the defendant police officers of liability because the trier of fact may find that the plaintiff's injury falls within the scope of the risk created by their negligent conduct in maintaining a police pursuit at high speeds in the wrong direction on a busy

one-way street. The Court noted that: "The intervention of negligent or even reckless behavior by the driver of the car whom the police pursue does not, under the emergent majority view, require the conclusion that there is a lack of proximate cause between police negligence and an innocent victim's injuries." *Id*, p.607. In *Tetro* the defendants, in violation of announced town policy, pursued the car at high speeds through busy city thoroughfares, into a one-way street the wrong way. Consequently the Supreme Court held that it was proper for the trial court to leave to the jury the determination of both negligence and of proximate cause as questions of fact. Here the court concludes that the defendant police officer was not negligent therefore the decision in *Tetro* is inapplicable.

Even assuming that Officer Rutkauski's conduct was negligent, the court agrees with the position of the defendants that it was not the proximate cause of Adgers' death. "To prevail on a negligence claim, a plaintiff must establish that the defendant's conduct 'legally caused' the injuries. . . . [l]egal cause is a hybrid construct, the result of balancing philosophic, pragmatic and moral approaches to causation. The first component of 'legal cause' is 'causation in fact.' 'Causation in fact' is the purest legal application of . . . legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct. . . The second component of 'legal cause' is proximate cause, which we have defined as '[a]n actual cause that is a substantial factor in the resulting harm' . . . The 'proximate cause' requirement tempers the expansive view of causation [in

fact] . . . by the pragmatic . . . shaping [of] rules which are feasible to administer, and yield a workable degree of certainty. . . Remote or trivial [actual) causes are generally rejected because the determination of the responsibility for another's injury is much too important to be distracted by explorations for obscure consequences or inconsequential causes. . . This court has often stated that the test of proximate cause is whether the defendant's conduct is a 'substantial factor' in producing the plaintiff's injury. . . . That negligent conduct is a 'cause in fact,' however, obviously does not mean that it is also a 'substantial factor' for the purposes of a proximate cause inquiry. The 'substantial factor' test, in truth, reflects the inquiry fundamental to all proximate cause questions; that is, whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence. . . . In applying this test, we look from the injury to the negligent act complained of for the necessary causal connection." (Internal quotation marks and citations omitted.) *Doe v. Manheimer*, 212 Conn. 748, 757-758 (1989). " [I]t is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendants' conduct]. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection. . . . This causal connection must be based upon more than conjecture and surmise." (Internal quotation marks and citations omitted.) *Winn v. Posades*, 281 Conn. 50, 56-7 (2007).

Based on the facts found by the court, the court concludes that Officer Rutkauski terminated the pursuit but continued to follow the van. Although no longer being pursued by the police with lights and sirens on, the driver of the van continued to speed away and drive in such a reckless manner as to cause the crash and Adgers' death. It was the driver's failure to stop when he was first approached by the police and his attempt to evade police capture which was the proximate cause of Adgers's death.

Conclusion

For the foregoing reasons the court concludes that judgment shall enter for the defendants on all remaining counts.

J.

Jane S. Scholl