

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2482CV00615

MICHAEL BARRY & DIANNE BARRY,)
Plaintiffs,)
)
VS.)
)
HELENA RAFFERTY,)
Defendant.)

**DEFENDANT HELENA RAFFERTY'S MEMORANDUM OF LAW IN SUPPORT OF
HER MOTION FOR SUMMARY JUDGMENT**

I. FACTUAL BACKGROUND

The defendant, Helena Rafferty, hereby moves that this Court enter summary judgment in her favor. As grounds therefore, Chief Rafferty states that there are no genuine issues of material fact in dispute and that she is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c).

Ms. Rafferty has been the Canton Police Chief since June 14th, 2022. See Chief Rafferty's deposition as Ex. A at p. 4, ln. 3-4. The Town assigned Chief Rafferty a Ford explorer in November 2023. Id. at p. 10, ln 13-14. Charles E. Doody is the Town Administrator of Canton, MA. See Affidavit of Mr. Doody as Ex. B, ln. 3. The Canton Police Chief is assigned a Town owned vehicle. Id. at ln.4. The Police Chief's assigned vehicle is equipped with lights, sirens, radio, and everything else needed to respond to an emergency call. Id. at ln.5. It is the Town of Canton's policy that Chief Rafferty is on duty any time she is operating her Town assigned vehicle. Id. at ln.6. The Chief's job requires her to respond to emergencies throughout the day and night, so she is assigned a vehicle that is equipped with the necessary equipment to do so, from wherever she may be at the time she receives an emergency call. Id. at ln.7. The Canton Police Chief, Canton Fire Chief, Deputy Police Chief, Deputy Fire Chief and Town Administrator are the only Town employees

who are assigned a Town owned vehicle and all are considered to be on duty any time either are driving their assigned vehicle. Id. at ln.8.

On the date of the incident Chief Rafferty left the Canton Police station and drove to TJ MAXX in Plainville to return some items. See Chief Raferty's deposition as Ex. A at p. 11, ln.. 11-21. While driving towards TJ Maxx Chief Rafferty was having a work related phone call and once she was in the store parking lot she was sending work related e-mails. Id. After leaving TJ Maxx, on her way to her home in Norfolk, she was involved in a collision with a pedestrian at the intersection of South and Creek Street in Wrentham. Id. at p. 13, ln.. 3-8.

This lawsuit followed. Plaintiffs' Complaint contains two separate causes of action:

Count I- Negligence
Count II- Loss of Consortium

As discussed in greater detail below, each of these two claims is now ripe for summary judgment.

II. STANDARD OF REVIEW

Rule 56(c) of the Massachusetts Rules of Civil Procedure provides that summary judgment is appropriate if the pleadings, deposition testimony, answers to interrogatories, responses to requests to admit and affidavits demonstrate that there is no genuine issue as to material facts and that the moving party is entitled to judgment as a matter of law. MASS. R. CIV. P. 56(c). A party without the burden of proof at trial is entitled to summary judgment if it negates an essential element of the party's case with affirmative evidence. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). "A complete failure of proof concerning an essential element of the non-moving party's case renders all other facts immaterial and mandates the award of summary judgment." Id., at 711, citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The Court must consider the facts in a light most favorable to the non-moving party, and all reasonable inferences

are to be drawn in the non-moving party's favor. Sullivan v. Liberty Mutual Insurance Co., 444 Mass. 34, 38 (2005).

Once the moving party establishes that there is no triable issue of material fact, the opposing party must respond and allege specific facts establishing the existence of a genuine issue of material fact in order to defeat the motion. Pederson v. Time, Inc., 404 Mass. 12, 17 (1989). The party opposing summary judgment may not rest upon mere allegations, conclusory assertions, or speculation, but must set forth a minimum factual setting, with citation to appropriate materials, showing there is a genuine issue for trial. Madsen v. Erwin, 395 Mass. 715, 719 (1985). The opposing party's evidence must also be *admissible*. Godbout v. Cousens, 396 Mass. 254, 261 (1985). There must be "sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); see also, Donaldson v. Farrakhan, 436 Mass. 94, 96 (2002) (citing Anderson, supra, with favor). Summary judgment should be readily granted in instances where it is justified. Community Nat'l Bank v. Dawes, 369 Mass. 550, 555-56 (1976).

III. ARGUMENT

A. CHIEF RAFFERTY IS IMMUNE FROM SUIT

Public employees remain personally immune "for any injury or loss of property or personal injury or death caused by his negligent or wrongful act or omission" M.G.L. c. 258, § 2; McNamara v. Honeyman, 406 Mass. 43, 46 (1989); Doe v. City of Fitchburg, 76 Mass. App. Ct. 1106, at *4 (2010); Williams v. Bresnahan, 27 Mass. App. Ct. 191, 192 – 93, *rev. den.*, 405 Mass. 1202 (1989). See Caisse v. DuBois, 346 F.3d 213, 218 (1st Cir. 2003) (MTCA "shields public employees from personal liability for negligent conduct"). Personal immunity is conditioned by

two factors. First, the employee must be acting “within the scope of his office or employment ...” at the time of the negligent or wrongful act or omission. M.G.L. c. 258, § 2; Berry v. Commerce Ins. Co., 488 Mass. 633, 636 (2021); Clickner v. City of Lowell, 422 Mass. 539, 542 – 44 (1996). See Doyle v. City of Quincy, 104 Mass. App. Ct. 761, 765 (2024) (to survive motion to dismiss on personal immunity grounds, plaintiff must allege sufficient facts to “plausibly suggest” public employee acted outside scope of his office or employment); Champa v. Town of Billerica, 2001 WL 920000, at *3 (Mass. Super. Ct. June 27, 2001) (police officer working detail at high school “battle of the bands” concert held to be acting within scope of employment). Thus, an off-duty employee or one who intentionally engages in conduct adverse to the interests of her employer will not enjoy personal immunity. See Doe v. Dubeck, 2006 WL 1704261, at *2 (D. Mass. June 19, 2006) (“Sexual misconduct by a teacher clearly falls outside the scope of employment”); Doe v. Old Rochester Reg’l Sch. Dist., 56 F. Supp. 2d 114, 121 (D. Mass. 1999) (acts of rape and indecent assault and battery by teacher and coach on female student held outside scope of employment); Canty v. Old Rochester Reg’l Sch. Dist., 54 F. Supp. 2d 66, 71 (D. Mass. 1999) (rape by athletic coach held outside the scope of employment); Armstrong v. Lamy, 938 F. Supp. 1018, 1029–30 (D. Mass. 1996) (sexual assault by music teacher held outside the scope of employment). But see Berry, 488 Mass. at 637 (act may be within scope of employment even though it is tortious); Commonwealth v. Jerez, 390 Mass. 456, 461 – 62 (1983) (collecting cases where tortious conduct held within employee’s scope of employment).

Here, the summary judgment record reflects that Chief Rafferty was on duty at the time of the subject accident, and therefore she is immune from suit. The Town assigned Chief Rafferty a Ford explorer in November 2023. Id. at p. 10, ln 13-14. Charles E. Doody is the Town Administrator of Canton, MA. See Affidavit of Mr. Doody as Ex. B, ln. 3. The Canton Police

Chief is assigned a Town owned vehicle. Id. at ln.4. The Police Chief's assigned vehicle is equipped with lights, sirens, radio, and everything else needed to respond to an emergency call. Id. at ln.5. It is the Town of Canton's policy that Chief Rafferty is on duty any time she is operating her Town assigned vehicle. Id. at ln.6. The Chief's job requires her to respond to emergencies throughout the day and night, so she is assigned a vehicle that is equipped with the necessary equipment to do so, from wherever she may be at the time she receives an emergency call. Id. at ln.7. The Canton Police Chief, Canton Fire Chief, Deputy Police Chief, Deputy Fire Chief and Town Administrator are the only Town employees who are assigned a Town owned vehicle approved for personal use and all are considered to be on duty any time either are driving their assigned vehicle. Id. at ln.8. While driving towards TJ Maxx Chief Rafferty was having a work related phone call and once she was in the store parking lot she was sending work related e-mails. Id. Based upon the foregoing, Chief Rafferty is immune from suit in accordance with M.G.L. c. 258, § 2.

VI. CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Court grant her Motion for Summary Judgment as to both counts of Plaintiffs' Complaint against her, together with attorneys' fees and costs and such other relief as this Court deems appropriate.

The Defendant,
HELENA RAFFERTY,
By her Attorneys,

PIERCE DAVIS & PERRITANO LLP

/s/ Jason W. Crotty

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CERTIFICATE OF SERVICE

I, Jason W. Crotty, certify that on the 12th day of May 2025, a true copy of the above document was served by electronic mail on the following attorneys of record:

Seth D. Jacobs, Esq.
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sjacobs@zissonjacobs.com

/s/ Jason W. Crotty

Jason W. Crotty

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS
NORFOLK, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

MICHAEL BARRY AND DIANNE BARRY)
)
VS.) C.A.
) 2482CV00615
HELENA RAFFERTY)

DEPOSITION OF HELENA RAFFERTY, taken at the
request of the plaintiff pursuant to Rule 30
of the Massachusetts Rules of Civil Procedure before
Nancie B. Anzivino, a Notary Public in and for the
Commonwealth of Massachusetts, on November 21, 2024,
commencing at 11:00 A.M. via Zoom/audiovisual
communication.

A P P E A R A N C E S:

FOR THE PLAINTIFF:
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BY: JASON W. CROTTY, ESQ.

BAY STATE REPORTING AGENCY
69 BRAEBURN LANE, ASHLAND, MASSACHUSETTS 01721
(508) 753-4121

1 Q. And you're the chief of the Canton Police?

2 A. I am.

3 Q. And how long have you been in that position?

4 A. Since June 14th of 2022.

5 Q. Okay. And what was your position before that?

6 A. I was deputy chief of police for about ten years,
7 2016, October of 2016. Actually, only six years.
8 Sorry.

9 Q. It's okay. How long have you been in law
10 enforcement?

11 A. I have been a police officer since January of
12 1989, and all my career has been at the Canton Police
13 Department.

14 Q. And just a few questions about yourself. I won't
15 go too far into it. Where did you go to high school?

16 A. Canton High School.

17 Q. Okay. And what year did you graduate?

18 A. 1985.

19 Q. And did you go to college?

20 A. I did, Stonehill College, and I graduated in
21 1992.

22 Q. Okay.

23 A. And then I also --

24 Q. Sorry, go ahead.

1 any time for official business, we understand.

2 A. Okay, thank you.

3 Q. And we ask that you answer the question pending
4 unless it's obviously an emergency or something like
5 that.

6 A. Okay.

7 Q. And if you need to make a phone call or use the
8 restroom -- I understand you've got an important job, so
9 if you need to step away for a few minutes, we
10 understand.

11 So that Ford Explorer, is that owned by the town
12 of Canton?

13 A. It is. I just did -- I got assigned that vehicle
14 in November of '23. It was a new vehicle for me.

15 Q. And were you the only one that was using that
16 vehicle?

17 A. Yep.

18 Q. And would you take it home every night?

19 A. Yes. That is part of my contract. Twenty-four/
20 seven, I have to be available.

21 Q. Were you allowed to use it? Say you were at home
22 in Norfolk and you wanted to go to Shaw's or something,
23 you could use that vehicle?

24 A. It's the only vehicle I use. I don't have a

1 personal vehicle that I drive.

2 Q. Okay. And are you still using that same vehicle
3 that was involved in the incident we're here for today?

4 A. Yes, sir.

5 Q. Okay. And that vehicle -- on that day, you left
6 work -- about what time did you leave the Canton Police
7 Department?

8 A. I would say around 5:00, between 5:00 and 5:30.

9 Q. And where did you go first after you left Canton
10 PD?

11 A. I left work and I -- on the way -- I had to run a
12 personal vehicle [sic] and return an item at TJ Maxx in
13 Plainville, so I went home a different way than I
14 typically would go home. On the way home, I was
15 handling work, different stuff. I have a radio in the
16 car, I have the lights, so, you know. A citizen had
17 reached out to me, so on the way home, I was handling
18 that phone call. And then I stopped at the TJ Maxx and
19 returned the item and came out and returned a couple of
20 emails that had come in when I was in the store and then
21 got back in the car to head home to Norfolk, the back
22 roads of Plainville into Wrentham.

23 Q. So you were going from the Canton Police
24 Department to TJ Maxx in Plainville; correct?

1 the way between the TJ Maxx and your house?

2 A. Not at all.

3 Q. At some point, you were involved in a collision
4 with a pedestrian; correct?

5 A. Yes.

6 Q. Okay. And where did this occur?

7 A. At the intersection of South Street and Creek
8 Street.

9 MR. CROTTY: Chief, you can take a minute if you
10 want to. I know this is not the best subject for you,
11 so take a deep breath. It's okay.

12 A. I'm good.

13 Q. And I will say that -- just off the record for a
14 minute.

15 (Discussion held off the record.)

16 Q. So you're turning onto -- was your intention to
17 turn onto Creek Street from South Street?

18 A. Yes. That's one of the ways I can go home.
19 Either way. I can go straight through Wrentham Center.
20 This night, I decided to take a left onto Creek.

21 Q. So you were making a left from South Street onto
22 Creek; correct?

23 A. Yes, sir.

24 Q. Okay. And obviously, you struck Mr. Barry during

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

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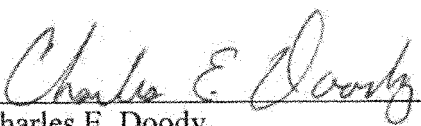
MICHAEL BARRY & DIANNE BARRY,)
Plaintiffs,)
)
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HELENA RAFFERTY,)
Defendant.)

Affidavit of Canton Town Administrator Charles E. Doody

I, Charles E. Doody, hereby depose and state:

1. I am more than 18 years of age and believe in the obligations of an oath.
2. I make this affidavit of my own personal knowledge.
3. I am the Town Administrator of Canton, MA.
4. The Canton Police Chief is assigned a Town owned vehicle.
5. The Police Chief's assigned vehicle is equipped with lights, sirens, radio, and everything else needed to respond to an emergency call.
6. It is the Town of Canton's policy that Chief Rafferty is on duty any time she is operating her Town assigned vehicle.
7. The Chief's job requires to respond to emergencies throughout the day and night, so she is assigned a vehicle that is equipped with the necessary equipment to do so, from wherever she may be at the time she receives an emergency call.
8. The Canton Police Chief, Canton Fire Chief, Deputy Police Chief, Deputy Fire Chief, Town Administrator are the only Town employees who are assigned a Town owned vehicle's approved for personal use and all are considered to be on duty any time either are driving their assigned vehicle.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 1st DAY OF May, 2025.



Charles E. Doody
Town Administrator, Canton, MA.