

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

Dr. Cora Chester,
Plaintiff,

v.

Whitehead Park, LLC
Defendant.

Civil Action
File No.: 18A71129

**PLAINTIFF’S BRIEF IN SUPPORT OF ITS MOTION *IN LIMINE* TO EXCLUDE
EVIDENCE**

Plaintiff hereby moves in limine for an order excluding the Whitehead Association Public Safety Department’s defensive cycling safety suggestion, “Ride Defensively,” from evidence and shows the following:

I. Introduction

“Ride defensively” is a safety tip included in a Bicycle Safety Information pamphlet distributed by the Whitehead Public Safety Department (“WSD”). In relevant part, the safety tip encourages cyclists in Whitehead Park to “[r]educe speed and be prepared to stop when approaching intersections [...]” regardless of whether or not they have the right of way. (Bicycle Safety Information Packet – Whitehead Park, Plaintiff’s Exhibit “A”). Defendant attempts to use this safety tip as evidence that Plaintiff had a legal duty to reduce his speed at the intersection of James Brown Blvd and Franklin Drive on the incident date. However, the “Ride defensively” safety tip is not legally binding. The safety tip is preempted by Georgia’s Uniform Rules of the Road 40-6-72(b) and 40-6-184(a), which apply to drivers throughout the state of Georgia, including Whitehead Park, and directly contradict the safety tip. Because this safety suggestion is

not legally binding, it cannot be used to support the conclusion that Plaintiff was speeding or breached his legal duty to slow down at the intersection and is, therefore, irrelevant. Because the safety tip proposes information that directly contradicts state law, it also poses the danger of confusing a jury about the applicable rights and duties at issue in this case. Finally, sanctioning the proposition that the safety tip creates a legal duty for cyclists to slow down at intersections at which they have the right of way could produce dangerous public policy resulting in increased traffic collisions.

II. Background

On February 24, 2018, Dr. Cora Chester (“Dr. Chester”) was cycling eastbound on James Brown Blvd in Whitehead Park when he approached the intersection of Franklin Drive. (*See generally*, Whitehead Department of Public Safety Accident Report, ACC00091-01, hereinafter “Crash Report;” attached as Plaintiff’s Exhibit “B”). Franklin Drive has stop signs controlling both north and southbound traffic entering and crossing James Brown Blvd.

When Dr. Chester was approaching the intersection, a white van operated by Whitehead Park, LLC employee Ceaser Ajarry (“Mr. Ajarry”) was stopped at the southside stop sign on Franklin Drive. (Crash Report at 3). Importantly, Mr. Ajarry was on a side street (Franklin) and did not have the right of way. In fact, Mr. Ajarry was at a stop sign which was attached to a sign which cautioned drivers to “**WATCH FOR BICYCLES & PEDESTRIANS APPROACHING FROM THE LEFT.**” (Ceaser Ajarry Depo. at 112:4-25). This is precisely the direction that Dr. Chester was traveling.

Because no stop sign controlled Dr. Chester’s right of way, he proceeded through the intersection. While Dr. Chester was entering the intersection, Mr. Ajarry crossed the stop line

and pulled into Dr. Chester's lane of traffic. (Crash Report at 3). When Dr. Chester saw the van enter his lane, he slammed onto his brakes to avoid colliding with the van. (Crash Report at 3). Because he stopped so abruptly, Dr. Chester pitched over the handlebars of his bicycle and sustained severe injuries to his shoulders, neck, and head. (Crash Report at 3).

During a mediation session held on October 30, 2019, Defendant suggested that it had evidence that Plaintiff was speeding at the time of the collision. After mediation, Plaintiff served Defendant with its Third Set of Interrogatories in which it requested that Defendant "[p]rovide any and all factual bases that Defendant contends demonstrate that Plaintiff was cycling above the speed limit at the time of the incident [...]." Plaintiff's Third Interrogatories to Defendant at 1-2. In response, Defendant produced the safe cycling pamphlet from the WSSD, which included the "Ride defensively" safety suggestion. (Defendant's Response to Plaintiff's Supplemental Interrogatories at 1, Plaintiff's Exhibit "C").

III. Argument

A. The "Ride defensively" cycling suggestion is preempted by Georgia's Uniform Rules of the Road under the doctrine of state preemption.

The Georgia Constitution's Uniformity Clause states that

[l]aws of a general nature shall have uniform operation through this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

Ga. Const. of 1983, Art. III, Sec. VI, Par. IV(a). Gebrekidan v. City of Clarkston, 298 Ga. 651, 653 (Ga. 2016) (internal citations and punctuation omitted). This clause expresses the doctrine of state preemption: the concept that statutes promulgated by the Georgia General Assembly control

over local ordinances. See Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 274 (Ga. 1998). To the extent that local municipalities may pass laws, those municipalities must rely on specific permission granted by state statute, and the local ordinance must not conflict with general law. Id. at 463. Neither of these two conditions are met in the instant case.

i. The legislature did not grant the Whitehead Park Association the authority to make laws that conflict with the Uniform Rules of the Road.

The Georgia General Assembly has not granted the Whitehead Association the authority to make traffic laws governing drivers of motor vehicles or cyclists. Georgia Code § 12-3-194.1 sets forth the police powers granted by the state of Georgia to the Whitehead Association. Section A of the statute gives the Association the authority “to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all personal conduct restrictions upon the properties and facilities and the persons under its jurisdiction *to the extent that such is lawful under the laws of the state.*” (emphasis added). Per O.C.G.A. § 12-3-194.1, any Whitehead Park ordinance or rule that conflicts with state law is outside the authority of the Whitehead Park Association and preempted by applicable state law. Ordinance 3-113(D) of the Code of Whitehead Park recognizes this restriction of authority, stating in relevant part, “[n]othing in this [section] shall relieve any operator or rider of a bicycle within the boundaries of the Park from complying with all State laws governing the riding and operating of bicycles.”

Under Georgia law, cyclists have the same rights and responsibilities as drivers of motor vehicles. See O.C.G.A. § 40-6-291. Specifically, cyclists and drivers are bound by Georgia’s Uniform Rules of the Road, which span Georgia Code Sections 40-6-1 through 40-6-397. The Whitehead Memorial Association expressly adopted Georgia’s Uniform Rules of the Road in

Code Section 3-101, which states that the Uniform Rules of the Road “are hereby adopted as and for the traffic regulations of the Whitehead Association with like effect as if recited herein.”

Accordingly, Georgia’s Uniform Rules of the Road are the only traffic laws that create legal duties and responsibilities in regard to drivers and cyclists in Whitehead Park and preempt any and all other local rules or ordinances that contradict them.

ii. The “Ride defensively” safety tip directly conflicts with Georgia’s Uniform Rules 40-6-72(b) and 40-6-184(a).

O.C.G.A. § 40-6-72(b) requires the driver who is approaching the stop sign to stop and “yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.” This code section propounds two specific duties: (1) the duty to stop either at a stop line or before entering the crosswalk, and (2) the duty to yield the right of way if a vehicle is approaching closely enough to “constitute an immediate hazard.” Both of these duties are imposed on the driver approaching the stop sign – **not** on the driver who has the right of way. Because O.C.G.A. § 40-6-72(b) does not require the driver who has the right of way to slow down when approaching a stop sign, the WSD’s “Ride defensively” safety tip contradicts O.C.G.A. § 40-6-72(b), and is therefore preempted by the state law.

O.C.G.A. § 40-6-184(a) prohibits driving “at such a slow speed as to impede the normal and reasonable movement of traffic [...]” Slowing down while driving in a lane of traffic in which one has the right of way would impede the normal and reasonable movement of traffic as traffic normally moves at a constant speed, barring a legal duty to stop. This statute explicitly contradicts the WSD’s “Ride defensively” safety tip encouraging cyclists to slow down even

when they have the right of way. To fulfill their legal obligation under applicable and controlling Georgia state law, cyclists should ignore the “Ride Defensively” tip and proceed through intersections at which they have the right of way without slowing down so as not to obstruct traffic flow. Because the WSD’s “Ride defensive” cycling tip contradicts O.C.G.A. § 40-6-184(a) by requiring drivers to slow down when they have no legal duty, it is preempted by state law.

The WSD’s “Ride Defensively” safety suggestion directly contradicts cyclists’ statutory rights and obligations under O.C.G.A. §§ 40-6-291, 40-6-72(b) and 40-6-184(a). Because the state of Georgia has not granted the Whitehead Park Memorial Association the power to promulgate legal ordinances that contradict Georgia’s Uniform Rules of the Road, the “Ride defensively” safety tip is preempted under the Uniformity Clause. Because this rule is preempted by state law, it is unenforceable and therefore does not create legal duties on behalf of cyclists.

B. The WSD’s safety tip, “Ride defensively,” should be excluded from evidence as it is not relevant to the instant controversy.

The Georgia Code defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” O.C.G.A. § 24-4-401. The current issue is whether or not Plaintiff had a duty to slow down at the intersection of James Brown Blvd and Franklin Dr., and whether or not that duty was breached. The WSD’s “Ride Defensively” safety tip is irrelevant to the instant controversy because it does not constitute a legal obligation for cyclists to slow down and prepare to stop at intersections – it is merely a safety suggestion. Because the safety advice at issue would not assist a fact-finder in determining what legal duties

are applicable in the instant case and whether or not those duties have been breached, it is irrelevant evidence that should be excluded.

C. If the Court does find that the “Ride defensively” safety tip is relevant, it should be excluded under O.C.G.A. § 24-4-403 because its probative value is substantially outweighed by the danger that it might confuse the issues and mislead the jury.

Per O.C.G.A. § 24-4-403, “[r]elevant evidence may be excluded if its probative value is substantially outweighed by the danger of [...] confusion of the issues, or misleading the jury [...].” The WSD’s “Ride Defensively” safety tip poses such danger. Encouraging cyclists to slow down and be prepared to stop when approaching an intersection regardless of whether or not they have the right of way directly contradicts Georgia’s Uniform Rules of the Road –specifically O.C.G.A. §§ 40-6-291, 40-6-72(b) and 40-6-184(a) – which were expressly adopted by the Whitehead Park Association in Code Section 3-101. (Code of the Whitehead Association, 2006). Because it is not a law, the WSD’s defensive cycling advice does not create a legal duty. However, because the “Ride defensively” safety tip is included in a pamphlet disseminated by the WSD that also includes Whitehead Ordinance 3-113, a juror could find it difficult to differentiate between advice from a governmental agency and statutory legal obligations. Consequently, including the “Ride defensively” safety tip could lead to confusion about each party’s legal duties in the instant case and whether or not those duties were breached. Even if the Court finds that the safety tip has some relevance to the instant case, the danger that it poses of confusing the issues and misleading the jury about the applicable law outweighs any potential probative value.

D. The “Ride defensively” safety tip should be excluded because it could lead to increased traffic collisions and poses a threat to public safety.

Interpreting the WSD’s “Ride Defensively” safety tip to create a legal duty could have unintended negative consequences for cyclists and drivers in Whitehead Park. Slowing down at an intersection in which a driver has the right of way, is not legally obliged to slow down or stop, and may impede the flow of traffic could lead to increased collisions. Also, requiring cyclists to slow down when they have the right of way will wrongly signal to car drivers that they have the right of way – an action that could have negative consequences when these car drivers illegally take the right of way outside of Whitehead Park. (Deposition of Dr. Mark Mabel at 200:1-12). Moreover, this advice could also discourage automobile drivers from stopping or sufficiently checking for cyclists before proceeding into intersections. These practices could ultimately lead to more collisions. (Dr. Mark Mabel at 200:1-12). The WSD’s “Ride Defensively” safety tip should be excluded because following it poses a danger to general public safety.

IV. Conclusion

Plaintiff respectfully submits this motion and its Memorandum in support and asks this Court to enter an order excluding the Whitehead Association Public Safety Department’s defensive cycling safety suggestion, “Ride Defensively,” from evidence.