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MAUREEN G. KELLY  
LAKE CO. CLERK OF COURT

**IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO**

**ROBERT PARMERTOR, et al.** )  
 )  
 **Plaintiffs** )  
 **vs** )  
 )  
 **CHARDON LOCAL SCHOOLS, et al.** )  
 )  
 **Defendants** )

**CASE NO. 14CV000490**

**JUDGMENT ENTRY**

The within cause came on for consideration this day, to wit: February 15, 2018, upon Defendants Joseph Bergant, II, Dana Stearns, Andy Fetchik, Drew Trimble, and Michael Sedlak's Motion for Summary Judgment, filed on November 14, 2017; Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, filed on December 7, 2017; Defendants' Reply Brief in Support of their Motion for Summary Judgment, filed on December 14, 2017; Defendants' Notice of Reliance on Supplemental Authority, filed on January 23, 2018; and Plaintiffs' Response to Defendants' Notice of Supplemental Authority, filed on January 31, 2018.

This action involves the Complaint of Plaintiffs Robert and Dina Parmertor, each Individually and as Administrators of the Estate of Daniel Parmertor, deceased; Jeanne King, Individually and as Administratrix of the Estate of Russell King, Jr., deceased; Russell King; Jeffrey T. Orndorff, Administrator of the Estate of Demetrius Hewlin, deceased; Phyllis Ferguson; and Nick Walczak (collectively, "Plaintiffs") against Defendants Chardon Local Schools; Chardon Local School District; Chardon High School (collectively, "Chardon Schools"); Joseph Bergant, II; Dana Stearns; Andy Fetchik; Drew Trimble; Michael J. Sedlack (collectively, "Chardon School Employees"); Chardon Board of Education, Chardon Local Schools Board of Education (collectively, "Chardon School Board"); Debbie Seenarine-Wilson; Blake Rear; Cindy Sague; Karen Blackenship; David Fairbanks; Paul Stefanko; Guy Wilson; Larry Reiter (collectively, "Chardon Board Members"); The Lake Academy Alternative School; The Lake Academy Alternative School-Lake County Educational Service Center; Lake Academy; Lake County Educational Service Center

(collectively, "Lake Academy"); and Bill Kermavner; John Weiss; and Brian Bontempo (collectively, "Lake Educational Service Center Employees").

#### FACTS AND PROCEDURAL HISTORY

The Complaint concerns the shooting perpetrated by nonparty Thomas M. Lane, III ("Lane") at Chardon High School on February 27, 2012 as Lane waited in the school cafeteria for a transfer bus to Lake Academy, an alternative school for students with academic or behavioral problems. The shooting resulted in the deaths of Daniel Parmertor, Russell King, Jr. and Demetrius Hewlin, and caused serious permanent injury to Nick Walczak. The Parmertor, King and Hewlin Plaintiffs asserted claims in the Complaint against all Defendants for Wrongful Death: Negligence and Recklessness; Wrongful Death: Conscious Disregard, Malice, Willful and Wanton Misconduct; Survivorship; and Loss of Consortium, in connection with the deaths of the Plaintiffs' decedents. Plaintiff Nick Walczak asserted claims of Negligence and Recklessness, and Conscious Disregard, Malice, and Willful and Wanton Misconduct.

On November 25, 2014, the court granted several Defendants' motions for judgment on the pleadings, dismissing Plaintiffs' claims against The Chardon Schools, Chardon School Board, Chardon Board Members, and Lake Academy based upon statutory immunity pursuant to R.C. Chapter 2744. The court granted the School Employees' motion for judgment on the pleadings on Plaintiffs' negligence claims pursuant to R.C. 2744.03(A)(6), but denied the motion as to Plaintiffs' claims of recklessness, malice, and willful or wanton conduct.<sup>1</sup> Plaintiffs filed an appeal of the Judgment, and on February 29, 2016, the Eleventh District Court of Appeals affirmed this court's ruling in its entirety. The School Employees, to wit: Superintendent Joseph Bergant, II; Operations Manager Dana Stearns; High School Principal Andrew Fetchik; and Assistant Principals Drew Trimble and Michael Sedlak now move for summary judgment, pursuant to Civ.R. 56(C), on Plaintiffs' remaining claims.

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<sup>1</sup> The court also partially denied judgment on the pleadings as to the three Lake Educational Service Center Employees; however, Plaintiffs filed a Notice of Dismissal pursuant to Civ.R. 41(A)(1)(a) as to those Defendants on August 10, 2017.

The circumstances of the shooting are generally undisputed. On February 26, 2012, Lane was visiting his grandmother and made the decision to look for a gun in his uncle's bedroom. He eventually found a gun and ammunition, hid it in his backpack, and without the knowledge of any family members, removed it from the home with the intention of using it at school the next day. The following day, Lane rode the bus to Chardon High School and took a seat in the cafeteria where students congregated before classes began. After the bell rang and students started to disperse, Lane reached into his backpack and fired the concealed handgun, striking and killing Russell King, Jr. He then removed the gun from the backpack and continued firing, shooting and killing Daniel Parmertor and Demetrius Hewlin, and injuring two others. Lane was confronted by Frank Hall ("Hall"), the high school football coach, who had been assigned cafeteria duty. Lane ran down the hall from the cafeteria with Hall chasing him. Lane shot Plaintiff Nick Walczak in the back, seriously injuring him, and then ran out of the school. Approximately 22 seconds elapsed between the first shot and Lane's exit from the building.

#### ARGUMENTS

In their motion, the School Employees assert that summary judgment should be granted because Plaintiffs have failed to present any evidence of malicious, wanton or reckless conduct to support disregarding the statutory immunity to which the School Employees are entitled. Regarding the safety and security measures in place, the School Employees claim that they engaged in ongoing efforts with input from law enforcement, to create, implement and review adequate safety and security plans of schools throughout the district. Law enforcement officers evaluated the buildings to assess security improvements that could be made, and each school conducted state-mandated emergency drills. An active shooter drill was conducted at Chardon High School in 2009, with the involvement of several emergency response agencies including police, fire, and service departments. Additionally, local law enforcement was never critical of the safety or security apparatus at Chardon High School, including not having a school resource officer ("SRO") stationed at the school.

The School Employees further assert that they had significant interaction with local law enforcement, particularly at Chardon High School. The Chardon Police Dept. required an officer to walk through the school twice a day when school was in session. Lt. Troy

Duncan ("Lt. Duncan") was the Chardon Police Department's liaison to the school district and was at Chardon High School at least once per week. The School Employees contend that they did not rely exclusively on law enforcement to improve security. They engaged in efforts to increase security and safety at Chardon High School by having administrators and staff act as a visible presence throughout the day; monitoring the entry doors and cafeteria in the morning where large numbers of students congregated; providing students with guidance counselors; working to become acquainted with students individually; and regularly attending conferences to keep abreast of developments in school safety and security.

Regarding Plaintiffs' claims that Lane's criminal actions should have been foreseen, the School Employees maintain they had no knowledge of any behavioral issues or violent propensities of Lane. Lane attended Lake Academy, not due to academic or behavioral issues but based on a request from his grandparents, who believed that Lane's older brother had been successful at Lake Academy and thought Lane would be successful there as well. Lane had some attendance issues due to recurring migraine headaches but he had no disciplinary issues and was on track to graduate early despite his absences. According to the School Employees, there is no evidence they had any knowledge that Lane intended to bring a gun to school or that he intended to shoot and kill other students.

Finally, the School Employees argue that even without the protection of statutory immunity, Plaintiffs' claims fail as a matter of law because the School Employees did not have a legal duty to prevent Lane's unforeseeable criminal acts. According to the School Employees, Ohio law imposes no legal duty to protect against a third party causing injury unless the defendant shares a special relationship with the plaintiff or third person that justifies the imposition of a duty, and the injury is foreseeable. Because Ohio law does not recognize a special relationship between school officials and students, the School Employees state that they had no legal duty to protect against Lane's unforeseeable criminal conduct.

Conversely, Plaintiffs contend that Chardon High School was not nearly as safe as the School Employees have suggested, and that local police were called to the school 500-600 times per year "typically in response to reports of fighting, threats to faculty and staff, drugs, thefts, and vandalism." Plaintiffs allege the School Employees ignored security

recommendations which could have deterred, if not prevented, Lane from opening fire in the cafeteria. Specifically, a Safety and Security Action Team ("Safety and Security Team") was formed in 2006 to assess school district safety and to create a proposal for the Chardon School Board ("Safety Proposal") addressing security issues. According to Plaintiffs, the original Safety Proposal included a recommendation for a full-time SRO; however, Assistant Principal Trimble, who was Chair of the Safety and Security Team, crossed off the SRO recommendation and handwrote "Supervision" on the page. Plaintiffs aver that several school districts in the area had full-time SROs and it is doubtful the shooting would have occurred if an SRO had been present at Chardon High School.

In their Reply, The School Employees argue that whatever criticisms Plaintiffs have regarding the decision not to recommend the SRO, the School Employees' actions do not rise to the level of malicious, reckless or wanton misconduct, or bad faith, particularly when: (1) the School Employees enacted many other security measures and continually interacted with law enforcement to increase school security; and (2) the decision to hire an SRO was under the control of the Chardon School Board, not the individual administrators.

#### LAW & ANALYSIS

In order for summary judgment to be granted, the moving party must prove: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 667 N.E.2d 1197 (1996).

The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party satisfies the burden, then the nonmoving party has the burden pursuant to Civ.R. 56(E) to provide evidence demonstrating a genuine issue of material fact. *Id.* If the nonmoving party does not satisfy this burden, then summary judgment is appropriate. Civ.R. 56(E).

Pursuant to R.C. 2744.03(A)(6), an employee of a political subdivision is immune from liability unless one of the following applies:

\* \* \*

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in wanton or reckless manner;

\* \* \*

The term malice includes "the willful and intentional design to do injury, or the intention or desire to harm another \* \* \* through conduct which is unlawful or unjustified." *Cook v. Hubbard Exempted Village Bd. of Edn.*, 116 Ohio App.3d 565, 565, 688 N.E.2d 1058 (11<sup>th</sup> Dist. 1996). "Bad faith" involves "a dishonest purpose, moral obliquity, conscious wrongdoing, [or] breach of a known duty through some ulterior motive or ill will." *Shadoan v. Summit Cty. Children Serv. Bd.*, 9<sup>th</sup> Dist. Summit No. 21486, 2003-Ohio-5775. "Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is a great probability that harm will result." *Anderson v. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, 983 N.E.2d 266, paragraph three of the syllabus. "Reckless conduct is characterized by the conscious disregard or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Id.* at paragraph four of the syllabus.

Issues regarding malice, bad faith, and wanton or reckless behavior are generally questions presented to the jury. *Id.* Because the standard for showing such conduct is high, summary judgment is appropriate in instances where "the individual's conduct does not demonstrate a disposition to perversity." *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d 505, ¶ 75. Furthermore, courts "must apply the law without consideration of emotional ramifications and without the benefit of 20-20 hindsight." *Id.* at ¶ 76.

Upon review, the court finds the School Employees' Motion for Summary Judgment well taken. As an initial matter, Plaintiffs' significantly misstate the history of police interaction with Chardon High School. The 500 to 600 police "calls" Chardon Police Department responded to were not, as Plaintiffs allege, "typically in response to reports of fighting, threats to faculty and staff, drugs, and vandalism," nor were the police visits strictly

to Chardon High School. According to former Chardon Police Chief Timothy McKenna's ("Chief McKenna") deposition testimony, the 500 to 600 calls included visits to all schools in the Chardon School District. McKenna Depo. p. 67. He stated that "[e]very time an officer stopped to do a walk-through as required morning and afternoon, both middle and the high school created a call." *Id.* As for calls requiring a police response, Chief McKenna stated that faulty alarm signals "would probably be your number one response." *Id.* at p. 70. Although Chief McKenna acknowledged that verbal and physical fights, vandalism and drug issues occurred at Chardon High School, he gave no indication that such situations were a common or pervasive problem. *Id.* at pp. 70-72. Additionally, he was aware of only one incident in which a student had brought a firearm to a football game, and he had no knowledge of any student ever bringing a knife or gun into Chardon High School. *Id.*

The Chardon School District formed the Safety and Security Team in the 2006/2007 school year as part of its Strategic Safety Plan, to explore all aspects of safety and security throughout the Chardon Schools and determine where deficiencies might exist. The group's mission was to meet and create a Safety Proposal to present to the Chardon School Board before the 2007/2008 school year. Although the group included several individuals at the outset, members gradually dropped out, leaving as the final team members, High School Principal Doug DeLong ("DeLong")<sup>2</sup>, Lt. Duncan, community member and parent Tim Goergen ("Georgen"), and Assistant Principal Drew Trimble ("Trimble"), who was the committee chair.

*Assistant Principal Drew Trimble*

Plaintiffs claim that Trimble exhibited willful and wanton misconduct by making the unilateral decision to remove the SRO recommendation from the Safety Plan. Trimble stated that as committee Chair, she facilitated the meetings and typed the finalized Safety Proposal with input from the committee. Trimble Depo., pp. 15-16. Her function was not to "approve" the plan but to submit the plan based upon the findings of the group as a whole. *Id.* at p.31. The committee's task was to evaluate security issues for the entire district, not just the high school, and the group met approximately ten times. *Id.* at pp. 24, 52. Trimble recalled that, with input from law enforcement, the committee determined

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<sup>2</sup> DeLong left the Chardon School District at the end of the 2007/2008 school year.

safety and security issues in Chardon were being “handled” and although an SRO would have been a nice addition, it was not deemed “necessary.” *Id.* at p. 22. The term “SRO” was crossed off the final plan and replaced by “Supervision” after the group decided a full-time SRO was not needed, and student/security issues would be addressed by in-building administration and/or the Chardon Police Department or Geauga Sheriff’s Department if necessary. *Id.* at p. 142. Trimble gave the completed Safety Proposal to Superintendent Joseph Bergant, II (“Bergant”) before it went to the Chardon School Board but she had no involvement in the creation or promulgation of the Safety Plan which was subsequently enacted. *Id.* at pp. 131, 141. She recalled no further conversations concerning SROs after the Safety Proposal was presented to the Chardon School Board in the fall of 2007. *Id.* at p. 77.

Parent and citizen committee member Georgen stated that the recommendations were not up to individual members but the entire committee. Georgen Depo., p. 45. The SRO discussions considered whether it would be reasonable to have an SRO at Chardon High School, given that Chardon is a city with a population of only 5,000. *Id.* at pp. 18, 21. Georgen did not recall reaching definitive conclusions about SROs and considered the discussions to be “a recommendation to research it further.” *Id.* at p.18. Lt. Duncan recalled recommending an SRO as part of the Security Plan, but acknowledged that it was one of “the 15 or 18 things” they discussed to improve security. Duncan Depo, pp. 62, 67. He did not recall being present when the SRO recommendation was changed to “Supervision,” nor did he know who was responsible for making the change. *Id.* at pp. 65, 67. Nonetheless, he considered the security apparatus in place at Chardon High School to be adequate and appropriate, and stated that he would not have sent his daughter to the school if he did not think it was safe. *Id.* at pp. 94-95. Georgen also believed the school district had taken reasonable measures to ensure the safety and security of his children. Georgen Depo., p. 46.

The court finds there is no evidence of malice, bad faith, and wanton or reckless behavior on the part of Trimble. Trimble denied having any particular decision-making authority beyond that of the other group members, and both Lt. Duncan and Georgen indicated that decisions were made by group consensus. The evidence indicates that the Safety and Security Team meetings were “brainstorming” sessions to consider options for

increasing safety and security throughout the district, while also considering the costs involved. No evidence exists that the ultimate conclusions were anything other than a group recommendation to forward to the Chardon School Board, who would then decide which, if any measures, to implement. Assuming, arguendo, that Trimble unilaterally changed the SRO recommendation to "Supervision," there is no evidence that she did so with "a willful and intentional design to do injury without just cause or excuse \* \* \* or a failure to exercise any care when the probability of harm is great, and that probability of harm was known" to her. *Vidovic v. Hoynes*, 11<sup>th</sup> Dist. Lake No. 2014-L-054, 2015-Ohio-712, quoting *Piispanen v. Carter*, 11<sup>th</sup> Dist. Lake No. 2005-L-133, 2006-Ohio-2382. As such, Trimble is entitled to judgment as a matter of law on the immunity issue.

*Superintendent Joseph Bergant, II*

Bergant was Superintendent of the Chardon Local Schools from 2005 to 2013. Bergant Depo., p. 7. He acknowledged that from an employment standpoint, he was the "point person" for security issues at Chardon High School, but Trimble was knowledgeable about security as well. *Id.* at p. 10. Bergant recalled having one casual conversation with Chief McKenna in approximately August 2011 in which Chief McKenna recommended that the school district investigate obtaining an SRO for Chardon High School. *Id.* at pp. 11-13. Bergant believed the school district lacked the money to pay for an SRO but Chief McKenna advised him that grants to pay for the SRO were available from the U.S. Department of Education. *Id.* at p. 17. He acknowledged that prior to 2011 there were no funds budgeted for an SRO because he "didn't want one." *Id.* at p. 10. After the discussion with McKenna, Bergant decided that an SRO was needed but he did not tell Trimble, the Chardon Board Members or anyone else. *Id.* at pp. 60-62. Prior to the shooting, Bergant never requested from the School Board any funds for an SRO. *Id.* at p. 86.

In 2008, Bergant sent a letter to parents and staff in the district advising them that a student had entered Willoughby South High School with a gun and had been apprehended by police. *Id.* at p. 116. Bergant agreed that it was foreseeable after the Willoughby South incident, that a person could enter Chardon High School with a gun. *Id.* at p. 118. In response, the Chardon Schools increased the number of security cameras, and school officials made a visit to the Orange School District to observe a crisis drill. *Id.* at p. 123. With the cooperation of local law enforcement, an active shooter drill was

conducted at Chardon High School in 2009. *Id.* at p. 130. Bergant agreed there was nothing proactive in the district's Strategic Safety Plan to deter a shooting from occurring, and that the safety measures they had undertaken were reactive measures, intended to respond after a shooter had entered the building. *Id.* at pp. 129-130.

Plaintiffs contend that Bergant is liable because he did not pursue more proactive measures including budgeting for an SRO, even after a student with a gun had entered Willoughby South High School and Bergant realized that such a situation could occur at Chardon High School. The court finds that Bergant's actions cannot be characterized as conduct beyond negligence, for which Bergant is entitled to immunity. R.C. 2744.03(A)(6). There is no evidence that Bergant acted in bad faith, i.e., with a dishonest purpose, moral obliquity, conscious wrongdoing, [or] breach of a known duty through some ulterior motive or ill will. *Shadoan v. Summit Cty. Children Serv. Bd.*, 9<sup>th</sup> Dist. Summit No. 21486, 2003-Ohio-5775. Nor is there evidence that he acted wantonly, i.e., by failing to exercise any care toward those to whom a great duty of care is owed under the circumstances in which there is great probability that harm will result; or recklessly, i.e. with conscious disregard of or indifference to a known or obvious risk or harm to another that is unreasonable under the circumstances. *Chavalita v. City of Cleveland*, 8<sup>th</sup> Dist. Cuyahoga Nos. 104608 and 104621, 2017-Ohio-1048. Accordingly, the court finds that Bergant is entitled to judgment as a matter of law.

#### *Operations Manager Dana Stearns*

In 2012, Dana Stearns ("Stearns") was the Manager of Operations for the Chardon Board of Education. Stearns Depo., p. 7. Stearns stated that his employment responsibilities included overseeing all non-teaching personnel throughout the school district. *Id.* In addition, at the direction of the Superintendent, he researched options for certain security measures, such as surveillance cameras on school buses, and controlled access systems for entry into all school buildings. *Id.* at pp. 18-19. Based upon his research and the proposals he received, Stearns made a recommendation to the Superintendent, who in turn, made a recommendation to the Chardon School Board. *Id.* at pp. 23-24. The Chardon School Board had the ultimate authority for approval of any safety or security expenditure. *Id.* Stearns had only implementation and design authority for safety equipment, after the decision to purchase the equipment had been approved by

the Chardon School Board. *Id.* at p.11. He had no authority regarding the decision to hire an SRO and never discussed with anyone the possibility of having an SRO in the high school. *Id.* at p. 12.

Plaintiffs have made no specific allegations against Stearns and provide no evidence that he had any decision-making authority for hiring an SRO. As such, he is entitled to immunity as there is no evidence that he engaged in conduct as set forth in R.C. 2744.03(A)(6)(b).

*Assistant Principal Michael J. Sedlak*

Michael Sedlak ("Sedlak") was an Assistant Principal at Chardon High School from the fall of 2010 through the end of the 2012/2013 school year. Sedlak Depo., p. 6. The Safety Proposal and the implementation of the Strategic Safety Plan had been completed prior to his hiring. *Id.* at p.9. He was not involved in any discussions concerning staffing for security prior to the shooting in 2012, nor did he have any discussions with school officials or local law enforcement about the use of an SRO at Chardon High School. *Id.* at pp. 8, 11. Sedlak did not recall having conversations with Bergant or Principal Andrew Fetchik ("Fetchik") about budget issues for security, but he believed he could raise such issues for discussion with Fetchik if he thought a particular security measure was needed. *Id.* at p. 18. He acknowledged that the purpose of hiring an SRO after the shooting was to keep students and staff safe. *Id.* at p. 38.

The court finds that Sedlak is entitled to immunity as Plaintiffs raise no specific allegations against Sedlak and present no evidence that he engaged in acts of bad faith, maliciousness, recklessness, or wanton conduct.

*Principal Andrew Fetchik*

Fetchik was the Chardon High School Principal from the 2008/2009 school year through the 2015/2016 school year. Fetchik Depo., p. 5. The Strategic Safety Plan was already in place when he was hired. *Id.* at p. 10. Prior to 2012, annual meetings were conducted in which Fetchik, Sedlak, Trimble, Bergant, Stearns, Lt. Duncan, and Chief McKenna would evaluate security based upon the Strategic Safety Plan or Board policy. *Id.* at 17. Fetchik recalled general discussions about safety but he had no recollection of ever recommending an SRO to the group. *Id.* at p. 15. He would have made the recommendation for an SRO if he felt that one was needed. *Id.* at p. 20. Fetchik did not

recall having specific discussions about SROs with either Lt. Duncan or Chief McKenna, and he never requested funds for an SRO in his annual budget request. *Id.* at pp. 22, 32.

The court finds no specific allegations have been made against Fetchik and there is no evidence that Fetchik acted with bad faith, malice or in a wanton and reckless manner. Accordingly, he is entitled to immunity on Plaintiffs' claims.

#### *Plaintiffs' Expert Report*

Plaintiffs have submitted the expert report of Gregory M. Baepler of Security Consultant, LLC to further support their allegations. In the report, Baepler concludes that (1) by ignoring law enforcement recommendations to employ an SRO, the School Employees were reckless and wanton, and placed the safety of the Chardon High School students and staff at risk, and (2) an SRO would have deterred and prevented the incident. The court finds that the report is inadmissible because it is speculative and renders a conclusion that is within the province of the finder of fact. "Expert opinion testimony is admissible as to an ultimate fact without infringing upon the function of the jury, if the determination of such ultimate fact requires the application of expert knowledge not within the common knowledge of the jury." (Citations omitted.) *McQueen v. Goldey*, 20 Ohio App.3d 41, 47, 484 N.E.2d 712 (12<sup>th</sup> Dist. 1984). The question of whether the School Employees acted with malicious purpose, in bad faith, or in a wanton or reckless manner is the ultimate question for the finder of fact and not of such highly technical nature to be beyond the comprehension of the average juror. Furthermore, Baepler's conclusion that an SRO would have deterred and prevented the incident, which was completed in 22 seconds, is completely speculative. Because a fact-finder is capable of reaching conclusions on these issues without an expert-witness opinion, Baepler's testimony would be inadmissible at trial, and therefore cannot be relied upon in a summary judgment action. *Donlin v. Rural Metro Ambulance, Inc.*, 11<sup>th</sup> Dist. Trumbull No. 2002-T-0148, 2004-Ohio-1704, ¶ 26.

#### *The School Employees' Duty Concerning Lane*

Turning to Plaintiffs' claim that the School Employees knew or should have known Lane posed a danger to other students, there is no evidence the School Employees were ever notified by the Lake Academy teachers or administrators that Lane had behavioral or psychological issues. According to John Weiss ("Weiss"), former Director of Lake


Academy, Lane was quiet and reserved but he was respectful, and was very interested in pursuing his academics and doing a good job. Weiss Depo., p. 10. Weiss had no recollection of Lane ever having a disciplinary issue at Lake Academy. *Id* at p. 41. Likewise, Lake Academy's School Psychologist, Sharon Pfeiffer, stated that Lane was on track to graduate early, he consistently earned positive classroom evaluations which permitted him to participate in "weekly celebrations," and she could not recall any incident in which she was involved with him regarding a discipline matter. Pfeiffer Depo., pp. 14, 71, 27. Trimble also stated that Lane responded "appropriately, pleasantly" on occasions when she greeted him in the morning at Chardon High School. *Id.* at p. 92. Finally, Frank Hall had been Lane's study hall teacher during Lane's freshman year at Chardon High School, prior to transferring to Lake Academy. Hall recalled that Lane had a small group of friends but he did not consider him to be a "loner." Hall Depo., p. 9. Hall further described Lane as a quiet but "pleasant kid." *Id.* at p. 8.

#### *Conclusion*

Although tragic events occurred in this case, Plaintiffs have failed to demonstrate that any of the School Employees' actions were undertaken with malicious purpose, in bad faith, or in wanton or reckless manner. The School Employees did enact numerous security and safety measures prior to the shooting, including surveillance cameras in school buses and in school buildings, controlled access systems in the schools, participating in drills and training, engaging in ongoing review of safety measures, interacting with local law enforcement, and having a frequent police presence in Chardon High School. The fact that they chose not to investigate employing an SRO does not indicate that the School Employees made the decision in bad faith, with malice, or in a wanton and reckless manner. The court finds that no genuine issues of material fact exist and viewing the evidence most strongly in favor of Plaintiffs, the School Employees are entitled to judgment as a matter of law on Plaintiffs' claims.

WHEREFORE, it is the order of this court that Defendants Joseph Bergant, II, Dana Stearns, Andy Fetchik, Drew Trimble, and Michael Sedlak's Motion for Summary Judgment is hereby granted. Plaintiffs to pay court costs.

**IT IS SO ORDERED.**



**JOHN P. O'DONNELL, JUDGE**

**Copies to:**  
**W. Craig Bashein, Esq.**  
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**Peter Marmaros, Esq.**  
**John P. O'Neil, Esq.**  
**Thomas E. Dover, Esq.**  
**Markus E. Apelis, Esq.**

**FINAL APPEALABLE ORDER**  
**Clerk to serve pursuant**  
**to Civ.R.58 (B)**