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## Highspeed Pursuit of a Claim for Negligence: Analyzing Police Liability in a Vehicular Accident Involving Bystanders

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## NOTE

### Highspeed Pursuit of a Claim for Negligence: Analyzing Police Liability in a Vehicular Accident Involving Bystanders

*Harris v. City of St. Louis*, 658 S.W.3d 49 (Mo. Ct. App. 2022).

Harry Bell III\*

#### I. INTRODUCTION

Between 1994 and 2002, 3,146 people died as a result of highspeed police pursuits.<sup>1</sup> Many of these decedents were pedestrians, bicyclists, or occupants of an uninvolved vehicle.<sup>2</sup> In fact, statistics from the Federal Bureau of Investigation (“FBI”) indicate that bystander fatalities make up approximately 42% of total fatalities resulting from highspeed pursuits by law enforcement.<sup>3</sup> Deaths related to these pursuits may be even greater than the statistics suggest due to underreporting on the matter.<sup>4</sup>

How is fault attributed when a highspeed police pursuit harms an innocent bystander? Can a court attribute liability to law enforcement? Are there legal remedies available for victims to pursue against law

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<sup>1</sup> F. P. Rivara & C. D. Mack, *Motor Vehicle Crash Deaths Related to Police Pursuits in the United States*, *Motor Vehicle Crash Deaths Related to Police Pursuits in the United States*, 10 INJ. PREVENTION: J. INT’L SOC’Y FOR CHILD & ADOLESCENT INJ. PREVENTION 93 (2004).

<sup>2</sup> *Id.*

<sup>3</sup> Bonnie E. Bull, *In Pursuit of A Remedy: A Need for Reform of Police Officer Liability*, 64 S.C. L. REV. 1015 (2013).

<sup>4</sup> *Bystanders Injured in Police Pursuits*, HG. LEGAL RES., <https://www.hg.org/legal-articles/bystanders-injured-in-police-pursuits-38913> [https://perma.cc/C229-DMQQ] (last visited Jan. 8, 2024).

enforcement? The Missouri Court of Appeals for the Eastern District recently addressed these issues in *Harris v. City of St. Louis*.<sup>5</sup>

Part II of this Note discusses the essential facts of *Harris v. City of St. Louis*. Part III analyzes the legal standard for civil negligence generally and negligence as it relates to police misconduct during highspeed pursuits in Missouri. Part III will also provide an overview of civil procedure for motions of summary judgment and judgment on the pleadings. Part IV examines the appellate court's holding. Finally, Part V argues that the court's causation analysis was misguided in that it erroneously applied the foreseeability proximate causation test. Part V also explores the practical and legal consequences of the court's flawed conclusion.

## II. FACTS AND HOLDING

On July 24, 2019, St. Louis Metropolitan Police Department ("SLMPD") Officer James Zwilling observed suspect Danny Harris and another individual engaging in what the officer believed to be a drug deal.<sup>6</sup> Harris became aware of the officer's presence and attempted to evade the officer in his vehicle.<sup>7</sup> The suspect eventually fled, and a pursuit ensued between Zwilling and Harris.<sup>8</sup> The officer activated his emergency lights and sirens to execute a traffic stop, to no avail.<sup>9</sup> During the chase, Officer Zwilling radioed a description of the suspect's vehicle to other officers in the area.<sup>10</sup> The highspeed chase persisted down a series of city streets,<sup>11</sup> and the suspect dangerously disregarded a multitude of traffic laws.<sup>12</sup> Specifically, he ignored stop signs and traveled down numerous one-way streets.<sup>13</sup> At one point, the suspect nearly collided with a nearby bystander vehicle different than the one at issue in this case.<sup>14</sup> Sergeant Michael Scego spotted the suspect's vehicle and joined the highspeed pursuit.<sup>15</sup>

The chase continued through a public, 131-acre city park that contained pedestrian traffic.<sup>16</sup> Another officer, Officer Timothy Boyce,

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<sup>5</sup> 658 S.W.3d 49 (Mo. Ct. App. 2022).

<sup>6</sup> *Id.* at 50.

<sup>7</sup> *Id.* at 51–52.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 51.

<sup>11</sup> *Id.* at 50–52. City streets included: De Soto Ave., Blair Ave., College Ave., West Florissant Ave., Carter Ave., Linton Ave., Penrose St., E. Prairie Ave., Fairground Park, Vandeventer Ave., Palm Street, Warne Ave., Natural Bridge Blvd., and E. Prairie Ave. *Id.*

<sup>12</sup> *Id.* at 51–52.

<sup>13</sup> *Id.* at 51.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

was conducting a separate traffic stop at the time and observed the suspect in flight.<sup>17</sup> Officer Boyce then abandoned his traffic stop to pursue the suspect, as well.<sup>18</sup> Officer Boyce and the suspect were nearly involved in a head-on collision with each other, at which point Officer Boyce swerved off the road into the park with pedestrian traffic.<sup>19</sup> Officer Boyce and Sergeant Scego later attempted to deploy tire deflation devices in an effort to apprehend the suspect.<sup>20</sup> By this point in the chase, the police ran the vehicle's plates and they knew the identity of the suspect.<sup>21</sup>

Eventually, Officer Boyce deactivated his vehicle's emergency signals and disengaged from the chase due to the "substantial risk of serious physical injury to motorists and pedestrians."<sup>22</sup> Officer Boyce radioed his disengagement to other officers in the area.<sup>23</sup> The suspect continued to flee at high speeds, eventually colliding with an oncoming bystander vehicle.<sup>24</sup> At the time of the collision, Officer Boyce was approximately fifteen to twenty seconds, and 900 feet, from the suspect.<sup>25</sup> The officers were beyond the line of sight of the crash; however, Officer Boyce stated that he "saw a plume of smoke that he suspected to be a vehicle crash caused by the suspect."<sup>26</sup> One of the individuals in the bystander vehicle, Reniece Randle, was later pronounced dead by paramedics.<sup>27</sup> The other individual, Jacqueline Armstrong, suffered severe, life-altering injuries.<sup>28</sup>

A post-arrest interrogation revealed that the suspect was attempting to evade the police by going to his home.<sup>29</sup> However, the suspect passed his home during the pursuit because the highspeed chase was in full effect.<sup>30</sup> Throughout the pursuit, the suspect and the officers crossed

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 51–52.

<sup>24</sup> *Id.* at 52.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* As a result of the collision, Jacqueline Armstrong suffered "a closed fracture of the Occipital bone, a laceration of her spleen, a closed nondisplaced fracture of the pelvis, a lumbar transvers process fracture, a fracture of the right rib, bilateral pubic rami-fractures, a right pulmonary contusion, fracture of the scaphoid of the left wrist, traumatic adrenal hematoma, and hydronephrosis." Appellants' Statement, Brief, and Argument, at \*9, *Harris v. City of St. Louis*, 658 S.W.3d 49 (Mo. Ct. App. 2022) (No. ED 110325).

<sup>29</sup> *Harris*, 658 S.W.3d at 51–52.

<sup>30</sup> *Id.* at 51.

nineteen four-way intersections (at least one of which was a major state highway) drove through two one-way residential streets, and made a total of ten turns.<sup>31</sup> Both the suspect and law enforcement engaged in erratic driving patterns and drove at high speeds.<sup>32</sup>

At the Twenty-Second Judicial Circuit Court, Jaqueline Armstrong and Jemerio Harris, the son of Renice Randle (the “plaintiffs”), brought wrongful death and negligence claims against the City of St. Louis, Officer Swilling, Sergeant Scego, and Officer Boyce (the “defendants”).<sup>33</sup> In response, the defendants claimed that they were not the proximate cause of the collision that resulted in the plaintiffs’ harm.<sup>34</sup> Accordingly, the defendants moved for judgment on the pleadings, and the trial court granted their motion.<sup>35</sup>

On appeal to the Missouri Court of Appeals, Eastern District, the plaintiffs argued that the trial court erred in granting the defendants’ motion for judgment on the pleadings.<sup>36</sup> The plaintiffs contended that they pleaded sufficient facts indicating the officers were the proximate cause of their injuries.<sup>37</sup> They further suggested the suspect would have returned to his home and the accident would not have occurred if law enforcement officers adhered to SLMPD policies regarding highspeed pursuits.<sup>38</sup> The Court of Appeals, Eastern District, affirmed the lower court’s ruling, holding that the plaintiffs failed to show that the defendant officers were the proximate cause of the accident that killed the innocent bystander.<sup>39</sup>

### III. LEGAL BACKGROUND

This Part details the elements that establish a negligence claim, with a particular emphasis on the elements of duty, breach, and causation. Furthermore, this Part discusses potential liability for Missouri police officers in highspeed chases through the lens of the Missouri Supreme Court and Missouri Court of Appeals, Eastern District. Lastly, Part III will elucidate the distinction between the motions of summary judgment and judgement on the pleadings.

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<sup>31</sup> Appellant’s Statement, Brief, and Argument, *supra* note 28, at \*20–21.

<sup>32</sup> *See Harris*, 658 S.W.3d at 52.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 53.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 57.

### A. Negligence Elements

Negligence is the most common tort claim brought in civil courts, and it is used as a vehicle to obtain relief for plaintiffs that have suffered from injury or harm.<sup>40</sup> The tort of negligence has been defined as “the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”<sup>41</sup> To succeed in a civil action of negligence, a plaintiff must prove that: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the defendant was the cause of the harm; and (4) the plaintiff suffered actual damage to their person or property.<sup>42</sup>

#### 1. Duty

In some instances, individuals have a duty or responsibility to fulfill a standard of requisite care to others. This stems from policy considerations that individuals should be protected from certain types of harms.<sup>43</sup> In a civil action, whether a legal duty exists between one actor and another in a given situation is ultimately a question of law decided by the court.<sup>44</sup> Along with the establishment of a duty, a standard of care is attributed to an alleged tortfeasor.<sup>45</sup> The “standard of care” established in a negligence action is measured against how “reasonable” or “ordinarily prudent” persons would conduct themselves.<sup>46</sup> These labels are used as a tool to express what an individual should have done or should have known.<sup>47</sup> The “reasonable” or “ordinarily prudent” person is “a fictitious person, who is never negligent, and whose conduct is *always* up to standard.”<sup>48</sup>

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<sup>40</sup> JAMES UNDERWOOD, *TORT LAW PRINCIPLES AND PRACTICE* 157 (Rachel E. Barkow et al. eds., 2d ed. 2018).

<sup>41</sup> *Parrot v. Wells, Fargo & Co. (The Nitro-Glycerine Case)*, 82 U.S. 524, 536 (1872).

<sup>42</sup> *Negligence*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/negligence> [https://perma.cc/X4YM-FABW] (last visited Jan. 8, 2024).

<sup>43</sup> STUART M. SPEISER, *AMERICAN LAW OF TORTS* § 9:3 (Monique C. M. Leahy et al. ed. 2023).

<sup>44</sup> *Id.*

<sup>45</sup> *Hoover’s Dairy, Inc. v. Mid-Am. Dairymen, Inc./Spec. Products, Inc.*, 700 S.W.2d 426, 431 (Mo. 1985) (en banc).

<sup>46</sup> UNDERWOOD, *supra* note 40, at 160 (quoting RESTATEMENT (SECOND) OF TORT § 283 cmt. c. (1965)).

<sup>47</sup> *Id.* (citing RESTATEMENT (SECOND) OF TORT § 283 cmt. c. (1965)).

<sup>48</sup> *Id.* (quoting RESTATEMENT (SECOND) OF TORT § 283 cmt. c. (1965) (emphasis added)).

However, the standard of care may differ depending on an individual's knowledge and skill.<sup>49</sup> Society has established a minimum bar of care, below which an individual's conduct must not fall. However, superior intelligence, knowledge, or skill warrants "conduct consistent therewith."<sup>50</sup> A tortfeasor who possesses these qualities is expected to conduct himself in accordance with the conduct of "a reasonable man with such superior attributes," or in a manner that is "reasonable under the circumstances."<sup>51</sup>

## 2. Breach

In proving that a defendant breached his duty to a plaintiff, the plaintiff "must show that the defendant, by his act or omission, has violated some duty incumbent upon him or her which has caused the injury complained of."<sup>52</sup> In other words, the term "breach" simply implies that a defendant or alleged tortfeasor failed to adhere to the requisite standard of care.

## 3. Causation

Even where a plaintiff successfully proves that he or she was (1) owed a duty, (2) the alleged tortfeasor breached that duty, and (3) that he or she was harmed, no liability will be attributed to the defendant if he or she is not deemed to be the cause of the plaintiff's harm.<sup>53</sup> It is well settled that "tort law demands a link between the defendant's misconduct and the plaintiff's harm. Causation is that missing link."<sup>54</sup> A plaintiff must prove both "actual/but for" causation and "proximate" causation.<sup>55</sup> To establish "actual/but for" causation, a plaintiff will need to show that the harm would not have occurred absent, or but for, the defendant's conduct.<sup>56</sup> Proximate causation involves a more complex analysis. Most courts adhere to one of three tests: the foreseeability test; the direct cause test; or the substantial factor test, with the most common being the foreseeability test.<sup>57</sup>

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<sup>49</sup> *Id.* at 166–67 (citing RESTATEMENT (SECOND) OF TORT § 289 (1965)).

<sup>50</sup> *Id.* (quoting RESTATEMENT (SECOND) OF TORT § 289 (1965)).

<sup>51</sup> *Id.* at 167 (quoting RESTATEMENT (SECOND) OF TORT § 289 (1965)).

<sup>52</sup> *Parrot v. Wells, Fargo & Co. (The Nitro-Glycerine Case)*, 82 U.S. 524, 537 (1872).

<sup>53</sup> UNDERWOOD, *supra* note 40, at 229.

<sup>54</sup> *Id.*

<sup>55</sup> *Love v. Waring*, 560 S.W.3d 614, 619 (Mo. Ct. App. 2018).

<sup>56</sup> *Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852 (Mo. 1993) (en banc); RESTATEMENT (THIRD) OF TORTS § 26 (2011).

<sup>57</sup> UNDERWOOD, *supra* note 40, at 302.

The foreseeability test involves a showing that “the accident in which the plaintiff suffered his injuries was within the scope of the danger created by the defendant’s negligence or, stated differently, that the accident was a reasonably foreseeable consequence of the defendant’s negligence.”<sup>58</sup>

The substantial factor test assesses a number of factors to determine whether a defendant is the proximate cause of a plaintiff’s injury.<sup>59</sup> First, a court will examine all of the factors that may have contributed to the harm suffered by the plaintiff.<sup>60</sup> Next, a court must decide whether the defendant’s conduct set in motion a “force” or “series of forces” that remained active up to the time in which the plaintiff was harmed.<sup>61</sup> Lastly, a court will consider the lapse of time between the defendant’s action and the pertinent result.<sup>62</sup>

The direct cause test is rather straightforward. This test requires an inquiry into whether there was a direct connection or link between the defendant’s negligent acts and the resulting harm to the plaintiff, absent any independent intervening forces.<sup>63</sup> The direct cause test is utilized the least among the three predominant proximate causation tests.<sup>64</sup>

Missouri’s proximate causation test is most akin to the foreseeability test. Generally, under Missouri law, “. . .the injury must be a reasonable and probable consequence of the act or omission of the defendant.”<sup>65</sup> The Missouri Supreme Court has described the analysis as:

[G]enerally a “look back” test but, to the extent it requires that the injury be “natural and probable,” it probably includes a sprinkling of foreseeability. To the extent the damages are surprising, unexpected, or freakish, they may not be the natural and probable consequences of a defendant’s actions.<sup>66</sup>

Furthermore, Missouri courts determine proximate causation on a case-by-case basis.<sup>67</sup> The analysis must not be based solely “on speculation or conjecture.”<sup>68</sup>

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<sup>58</sup> Tieder v. Little, 502 So. 2d 923, 926 (Fla. Dist. Ct. App. 1987).

<sup>59</sup> Am. Truck Leasing, Inc. v. Thorne Equip. Co., 583 A.2d 1242, 1243 (Pa. Super. Ct. 1991).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> UNDERWOOD, *supra* note 40, at 279–80.

<sup>64</sup> *Id.* at 287.

<sup>65</sup> Callahan v. Cardinal Glennon Hosp., 863 S.W.2d 852, 865 (Mo. 1993) (en banc).

<sup>66</sup> *Id.*

<sup>67</sup> Stanley v. City of Independence, 995 S.W.2d 485, 488 (Mo. 1999) (en banc).

<sup>68</sup> *Id.* at 487.



*B. Negligence Liability for Police During Highspeed Pursuits in Missouri*

A police officer in hot pursuit of a suspect must adhere to two standards of care: “[(1)] he has the obligation to apprehend the traffic violator and prevent him from doing any harm to innocent users of the highway, and [(2)] he has the obligation to pursue the traffic violator in a manner that is neither careless, reckless, or wanton.”<sup>69</sup> It is the conduct or specific actions of the *police officer*—not the suspect—that forms the basis of a negligence action against a municipality or city.<sup>70</sup> Typically, the doctrine of qualified immunity is considered when assessing tort claims involving law enforcement.<sup>71</sup> Qualified immunity is a judicially created protection that absolves state actors from liability arising from their misconduct.<sup>72</sup> However, qualified immunity does not always shield officers from liability.<sup>73</sup> In the past, police officers have been held liable in cases where a plaintiff has alleged violations of statutes or formal police department policies.<sup>74</sup>

Under Missouri Supreme Court precedent, officer immunity will not apply if there is a statute that expressly waives it.<sup>75</sup> RSMo § 537.600, governing sovereign immunity exceptions, states in relevant part that:

immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instance[]: []Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment.<sup>76</sup>

Under SLMPD policy specifically, pursuit of a vehicle may be initiated upon belief that a suspect has engaged in a felony “involving the use or threatened use of deadly force and delay in apprehending the

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<sup>69</sup> *Oberkramer v. City of Ellisville*, 706 S.W.2d 440, 441–42 (Mo. 1986) (en banc).

<sup>70</sup> *Id.*

<sup>71</sup> *Qualified Immunity: What is Qualified Immunity?*, AM. BAR ASSOC. (Dec. 17, 2020), [https://www.americanbar.org/groups/public\\_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/](https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/) [<https://perma.cc/QB3V-RXPS>].

<sup>72</sup> *Id.*

<sup>73</sup> *Oberkramer*, 706 S.W.2d at 442.

<sup>74</sup> *Id.*

<sup>75</sup> *Southers v. City of Farmington*, 263 S.W.3d 603, 620 (Mo. 2008) (en banc).

<sup>76</sup> MO. REV. STAT. § 537.600 (2011).

suspect will pose a danger to other people.”<sup>77</sup> Moreover, any apprehension tactics (i.e., maneuvers, roadblocks, or cutting off the suspect vehicle) by police in highspeed pursuits of a suspect must be done in a standard emergency vehicle.<sup>78</sup> Pursuits should be executed through the use of marked police vehicles,<sup>79</sup> but an unmarked police vehicle may, in exigent circumstances, initiate pursuit.<sup>80</sup> However, unmarked vehicles must activate emergency lights and sirens, and pursuit by such vehicles may only continue until the appearance of a marked police vehicle.<sup>81</sup>

One of the leading cases in Missouri regarding law enforcement negligence during highspeed pursuits is *Stanley v. City of Independence*.<sup>82</sup> In *Stanley*, a police officer in a marked car spotted a van that matched the description of a vehicle implicated in a crime.<sup>83</sup> The police officer signaled to the driver of the vehicle by turning on his emergency lights and siren.<sup>84</sup> As he approached the vehicle, the suspect fled, and a pursuit ensued which lasted for approximately forty-five seconds.<sup>85</sup> Within that timeframe, the van reached speeds of up to fifty-five miles per hour in residential neighborhoods.<sup>86</sup> The suspect sped through a red light, and the pursuing police vehicle followed closely behind the suspect.<sup>87</sup> At another intersection, the suspect, driving approximately seventy miles per hour, crashed into a vehicle traveling in the opposite direction.<sup>88</sup> The collision killed the passengers in the bystander vehicle.<sup>89</sup> At the time of the collision, the pursuing law enforcement officer was 191 feet away.<sup>90</sup>

In *Stanley*, the Missouri Supreme Court ruled that the officer was not the proximate cause of the collision.<sup>91</sup> It reasoned that the suspect made the decisions to both flee and speed through red traffic signals, leading to the vehicular collision.<sup>92</sup> Ultimately, the court held that the officer was:

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<sup>77</sup> METROPOLITAN POLICE DEPARTMENT – CITY OF ST. LOUIS, SPECIAL ORD. 5-05 (Oct. 13, 2011) [hereinafter SLMPD SPECIAL ORD. 5-05] (giving special orders for the “Emergency Operation of Police Vehicles, Including Pursuits”).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 995 S.W.2d 485 (Mo. 1999) (en banc).

<sup>83</sup> *Harris v. City of St. Louis*, 658 S.W.3d 49, 52–53 (Mo. Ct. App. 2022) (citing *Stanley*, 995 S.W.2d at 486).

<sup>84</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 486).

<sup>85</sup> *Id.* at 54 (citing *Stanley*, 995 S.W.2d at 486).

<sup>86</sup> *Id.* at 53 (citing *Stanley*, 995 S.W.2d at 486).

<sup>87</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 486).

<sup>88</sup> *Id.* at 53–54 (citing *Stanley*, 995 S.W.2d at 486).

<sup>89</sup> *Id.* at 54 (citing *Stanley*, 995 S.W.2d at 486).

<sup>90</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 486).

<sup>91</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 487).

<sup>92</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 487).

connected to the plaintiff's injury solely through the conduct of the fleeing van. Thus, the only conceivable causal link between the officer's alleged negligence and the collision is the conjectural effect of his pursuit on the pursued vehicle . . . . There [was] nothing other than speculation to reach a conclusion that the officers conduct was a cause of the collision.<sup>93</sup>

Though the court in *Stanley* ultimately ruled in favor of the defendant-officers, some Missouri courts have ruled in favor of plaintiffs pursuing negligence claims against law enforcement. For example, in *Moyer v. St. Francois County Sheriff Department*, the police stopped a vehicle with stolen license plates.<sup>94</sup> The vehicle fled, and the subsequent pursuit lasted for approximately ten minutes at speeds near 120 miles per hour.<sup>95</sup> The suspect eventually collided with an innocent bystander vehicle.<sup>96</sup> The bystander filed a negligence claim against the county and stated that the officers were the cause of the collision.<sup>97</sup> The county moved for summary judgment on the plaintiff's claims, and the trial court granted the motion.<sup>98</sup> On appeal, the Missouri Court of Appeals, Eastern District, held that the trial court erred in granting the defendant's summary judgment motion on the issue of proximate causation.<sup>99</sup>

In its ruling, the Court of Appeals, Eastern District, reasoned that there is a degree of speculation in determining whether a suspect will cease careless or reckless flight upon termination of a pursuit; nevertheless, it opined that "common sense supports an inference that, as the time and distance between an officer and a fleeing suspect grows, the more likely it becomes that the suspect will cease fleeing in a reckless manner."<sup>100</sup> Accordingly, the court found that the facts in the case supported a showing of proximate causation, given the probability that the defendant would have ceased his reckless driving if the police officers terminated their pursuit.<sup>101</sup>

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<sup>93</sup> *Id.* (citing *Stanley*, 995 S.W.2d at 487).

<sup>94</sup> 449 S.W.3d 415, 416 (Mo. Ct. App. 2014).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 416–17.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 417.

<sup>100</sup> *Id.* at 418–19.

<sup>101</sup> *Id.*

*C. Civil Procedure: Judgment on the Pleadings vs. Summary Judgment*

A party's motion for summary judgment must be denied if there is a genuine issue as to any material fact or the movant is not entitled to judgment as a matter of law.<sup>102</sup> The assertion that a fact is not genuinely disputed must be supported "with specific references to the pleadings, discovery, exhibits or affidavits."<sup>103</sup> On the other hand, the standard for judgment on the pleadings is similar to a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, which essentially insists that a plaintiff has not stated a claim upon which relief can be granted.<sup>104</sup> In a motion for judgment on the pleadings, the movant must demonstrate that the facts asserted in the pleadings are "insufficient to warrant relief as a matter of law."<sup>105</sup> The court should only grant such a motion if, notwithstanding any evidence that might be later produced, the facts as pled cannot support a judgment in favor of the plaintiff.<sup>106</sup>

#### IV. INSTANT DECISION

In *Harris v. City of St. Louis*, the Missouri Court of Appeals, Eastern District, sought to determine whether the trial court properly granted judgment on the pleadings to the City of St. Louis and the individual police officers.<sup>107</sup> On appeal, the plaintiffs argued that the lower court erred in determining the officers involved in the highspeed pursuit of the vehicle were not the proximate cause of the plaintiffs' harm.<sup>108</sup> Thus, the court limited its review to a proximate causation analysis.<sup>109</sup>

The court began with a comparison between the instant case and the facts of *Stanley v. City of Independence*.<sup>110</sup> The court borrowed the reasoning outlined in *Stanley* to draw several conclusions regarding proximate cause.<sup>111</sup> The *Harris* court determined that the accident in question occurred due to the suspect's unlawful entry into an

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<sup>102</sup> Mo. R. Civ. P. 74.04(c)(6).

<sup>103</sup> *Id.* at 74.04(c)(1).

<sup>104</sup> *Emsweller v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, 591 S.W.3d 495, 498 (Mo. Ct. App. 2019) (citing *City of Dardenne Prairie v. Adams Concrete and Masonry, LLC*, 529 S.W.3d 12, 17 (Mo. Ct. App. 2017)); *see also* FED. R. CIV. P. 12(b)(6).

<sup>105</sup> *Emsweller*, 591 S.W.3d at 498 (citing *City of Dardenne Prairie*, 529 S.W.3d at 17).

<sup>106</sup> *Id.*

<sup>107</sup> *Harris v. City of St. Louis*, 658 S.W.3d 49, 52–53 (Mo. Ct. App. 2022).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*; *Stanley v. City of Independence*, 995 S.W.2d 485 (Mo. 1999) (en banc).

<sup>111</sup> *Harris*, 658 S.W.3d at 52–54.

intersection,<sup>112</sup> emphasizing the fact that the suspect in the present case made the conscious decision to unlawfully evade law enforcement.<sup>113</sup> The court further noted that the suspect made the decision to speed through red traffic lights and drive with a disregard for traffic laws.<sup>114</sup> According to the court, the only causal connection between the officers' alleged negligent acts and the harm suffered by the plaintiffs was merely "the conjectural effect of [the officers'] pursuit on the pursued vehicle."<sup>115</sup>

The court agreed with the defendants' arguments that the causal connection between the officers conduct and the bystanders' injuries was weaker than the plaintiffs suggested.<sup>116</sup> The court explained that it took fifteen to twenty seconds to arrive at the crash site.<sup>117</sup> Based on this fact, it concluded that the defendants lacked geographical proximity to the accident between the bystanders and the suspect.<sup>118</sup> The court further argued that it cannot be determined whether "the collision would have been avoided if the officer had abandoned the pursuit after initiating it."<sup>119</sup> Thus, according to the appellate court, the plaintiffs failed to establish a cause of action for negligence.<sup>120</sup>

## V. COMMENT

The *Harris* court's causation analysis was misaligned with legal theory governing proximate causation. Additionally, the court erred in affirming the lower court's granting of the defendant's motion for judgment on the pleadings. While the legal implications of these errors should not be overlooked, the reasoning of the Court of Appeals, Eastern District, in *Harris* presents practical implications for law enforcement as well.

### A. Proximate Cause Analysis

The court's foreseeability analysis to determine proximate causation in the instant case was practically nonexistent, and it is unnerving that the court arrived at its conclusion despite the litany of facts that may reasonably point toward the contrary. Here, the court essentially determined that the suspect's vehicle alone collided with the bystander's

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<sup>112</sup> *Id.* at 54.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 55.

<sup>118</sup> *See id.* at 54.

<sup>119</sup> *Id.* at 55.

<sup>120</sup> *Id.*

vehicle and that the bystander's harm could not have been a reasonable and probable consequence of either (1) the officers' failure to terminate the chase in a timely manner or (2) their act of going against SLMPD policies by engaging in the chase at all.<sup>121</sup>

In its analysis, the court principally relied on *Stanley v. City of Independence*.<sup>122</sup> However, *Stanley* is distinguishable from the instant case in several ways. First, the highspeed pursuits in the cases varied in length. In *Stanley*, law enforcement's highspeed pursuit of the suspect's vehicle was short-lived and took place predominantly on a single street.<sup>123</sup> In comparison, the highspeed pursuit executed by law enforcement in *Harris* carried on for over three miles.<sup>124</sup> Additionally, throughout the pursuit, nineteen four-way intersections were crossed, at least one of which was a major state highway; two one-way residential streets were traversed; and a total of ten turns were made.<sup>125</sup> Both the suspect and law enforcement engaged in erratic driving patterns and drove at high speeds through public areas.<sup>126</sup> Based on these facts, it was not "surprising, unexpected, or freakish" that innocent bystanders were harmed.<sup>127</sup> The bystanders' injuries were reasonably foreseeable consequences of the officers' negligent pursuit.<sup>128</sup>

In fact, it is arguable that the defendants' actions satisfy two of the predominant causation tests. As previously mentioned, given the erratic driving patterns and highspeed driving of both the officers and the suspect through public areas, it is difficult to ignore the applicability of the foreseeability test. Additionally, the facts of *Harris* arguably support a finding of causation under a substantial factor analysis. To reiterate, during a substantial factor proximate causation test, a court must first examine all of the factors that may have contributed to the harm suffered

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<sup>121</sup> *Id.* St. Louis Metropolitan Police Department policies stipulate that police officers should not engage in pursuits when investigating crimes that are perceived to be nonviolent felonies. SLMPD SPECIAL ORD. 5-05, *supra* note 77. In the instant case, the officer observed the suspect engage in what seemed to be a drug deal. *Harris*, 658 S.W.3d at 53. However, the record does not indicate that the suspect was engaging in any act of violence (i.e., no weapon, no observed hostility toward the other individual, no reckless or violent behavior that would be a threat to the public, etc.). *See id.*

<sup>122</sup> *Harris*, 658 S.W.3d 49, 52–53.

<sup>123</sup> Appellants' Statement, Brief, and Argument, *supra* note 28, at \*18 (citing *Stanley v. City of Independence*, 995 S.W.2d 485, 487 (Mo. 1999) (en banc)).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852, 865 (Mo. 1993) (en banc).

<sup>128</sup> Appellants' Statement, Brief, and Argument, *supra* note 28, at \*18.

by the plaintiff.<sup>129</sup> Next, the court must decide whether the defendant's conduct set in motion a "force" or "series of forces" that remained in effect up to the time in which the plaintiff was harmed.<sup>130</sup> Lastly, a court will consider the lapse of time between the defendant's action and the resulting harm.<sup>131</sup> Applying this substantial factor test, it can be argued that, in *Harris*, law enforcement (1) violated SLMPD policies to engage in a highspeed pursuit; (2) in wrongly initiating and engaging in this pursuit, set in motion a series of dangerous actions by both the suspect and themselves; (3) which were sufficiently temporally proximate to the plaintiffs' harm.<sup>132</sup>

Another factor to consider in this case is that the suspect was attempting to go to his house; however, he passed his house because the police were still in full pursuit.<sup>133</sup> In other words, the suspect was trying to gain access to the safety of his *home*.<sup>134</sup> After passing his home, he continued to drive erratically for over a mile until he collided with the plaintiffs.<sup>135</sup> If the officers in *Harris* abandoned the chase earlier than they did, the suspect would likely have (1) stopped driving erratically and (2) gone to his house. Thus, the collision would not have occurred, because the suspect would have retired into the privacy of his house. The court in *Moyer* supported this contention by positing that termination of a pursuit is likely to cause a fleeing suspect to believe that it is no longer necessary to drive negligently and/or recklessly to avoid apprehension.<sup>136</sup> Moreover, the National Institute of Justice ("NIJ") conducted a study that produced anecdotal data on this issue.<sup>137</sup> Seventy-five percent of suspects in the NIJ's study reported that they would cease driving recklessly upon feeling "safe."<sup>138</sup> "Safe," according to the suspects, meant they would "have to be free from the police show of authority by emergency lights or siren for approximately two blocks in town."<sup>139</sup>

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<sup>129</sup> *Am. Truck Leasing, Inc. v. Thorne Equip. Co.*, 583 A.2d 1242, 1243 (Pa. Super. Ct. 1991).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Harris v. City of St. Louis*, 658 S.W.3d 49, 53 (Mo. Ct. App. 2022).

<sup>133</sup> Appellants' Statement, Brief, and Argument, *supra* note 28, at \*21.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Moyer v. St. Francois Cnty. Sheriff Dep't.*, 449 S.W.3d 415, 418–19 (Mo. Ct. App. 2014).

<sup>137</sup> David P. Schultz et al., *Evidence-Based Decisions on Police Pursuits: The Officer's Perspective*, FBI L. ENF'T BULL. (Mar. 1, 2010), <https://leb.fbi.gov/articles/featured-articles/evidence-based-decisions-on-police-pursuits-the-officers-perspective> [<https://perma.cc/89WH-N3KB>].

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

Lastly, in relying so heavily on the facts in *Stanley* to derive its holding, the *Harris* court ignored the rule established in *Stanley* itself, which is that proximate causation analyses should be made on a case-by-case basis.<sup>140</sup> In *Moyer*, the court adhered to the case-by-case rule and astutely recognized that “the holding in *Stanley* is limited to its facts.”<sup>141</sup> Likewise, the court in *Harris* should have strictly evaluated the facts before it to make a determination regarding the dangerousness of this pursuit and the foreseeable consequences of the SLMPD officers’ actions.

### B. Civil Procedure

As a matter of procedure, the *Harris* court frequently cited to cases that addressed a trial courts’ granting of summary judgment to law enforcement on issues of negligence during highspeed pursuits.<sup>142</sup> In doing so, it conflated the standard for summary judgement and judgment on the pleadings. However, the difference between these standards is crucial in determining whether the court should have denied the defendants’ motion for judgment on the pleadings.

As mentioned in Part III, summary judgment requires a showing that there is “no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”<sup>143</sup> Conversely, judgment on the pleadings requires a showing that the allegations in the pleadings are insufficient to warrant judgment as a matter of law—in essence that no set of facts could support the plaintiff’s claim.<sup>144</sup> Whether the allegations ultimately have evidentiary support, and how strong that evidence is, are factual determinations that can only be made at a later stage. Though the granting of summary judgment or judgment on the pleadings are summarily dispositive of a case, the standards remain distinct. Therefore, citing opinions that dispose of a case at the summary judgment stage cannot provide the adequate support or validation for disposing of a case at the pleadings stage.

The totality of the facts and circumstances surrounding this case indicate that the defendants could have been, and likely were, the proximate cause of the plaintiffs’ injuries. Accordingly, the plaintiffs set forth sufficient facts to establish a plausible negligence claim. Based on the standard for judgment on the pleadings, it was erroneous for the court to rule in favor of the defendants. The issue should have at least survived the pleadings stage. Hypothetically, even if the court were to consider a motion for summary judgment by the defendants, this motion should also

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<sup>140</sup> *Stanley v. City of Independence*, 995 S.W.2d 485, 488 (Mo. 1999) (en banc).

<sup>141</sup> *Moyer*, 449 S.W.3d at 418–19.

<sup>142</sup> See generally *Harris v. City of St. Louis*, 658 S.W.3d 49 (Mo. Ct. App. 2022).

<sup>143</sup> Mo. R. Civ. P. 74.04(c)(6).

<sup>144</sup> See *supra* Part III.C.



be denied. The defendants are not entitled to judgment as a matter of law and, as discussed above, a genuine issue of material fact exists on the issue of causation. Reasonable minds could differ as to whether the defendants were the proximate cause of the plaintiffs' harm, and a jury might conclude that the collision was a reasonably foreseeable consequence—or a substantial factor—of the SLMPD officers' failure to terminate the pursuit in a timely manner.

### *C. Practical Implications of the Court's Ruling*

The court's ruling flies in the face of reason, and the justice system failed the plaintiffs in this case. Looking beyond the impact this outcome has on these particular plaintiffs, the ruling perpetuates the broader issue of innocent bystanders' inability to receive recourse or compensation for accidents resulting from unnecessary highspeed pursuits by police officers.<sup>145</sup> As previously stated, bystander fatalities make up approximately 42% of the total fatalities resulting from highspeed pursuits by law enforcement.<sup>146</sup> Yet, it is increasingly difficult for victims to obtain recourse from injuries resulting from these pursuits.<sup>147</sup> These results "should. . . 'shock the conscience' because it leads to the understanding that a fleeing felon who is harmed during a police pursuit will likely be able to recover in situations where an innocent bystander cannot."<sup>148</sup> This is because a proximate cause analysis would draw a closer connection between the harm suffered by a suspect being chased by police officers verses harm suffered by a third party who is not directly involved in the chase.

There does not appear to be vehement public backlash or public outrage toward law enforcement regarding dangerous highspeed chases. This could be because highspeed pursuits of suspects have been idealized in television, movies, and other forms of media for decades.<sup>149</sup> Much of this entertainment depicts a suspect "getting away at the expense of an untold number of bystanders,"<sup>150</sup> and this sensationalized portrayal of police pursuits may have "desensitized many to the effects and costs of these chases on the general public."<sup>151</sup> In any event, the danger that it poses and the damage that it has done are in fact very real, especially to the victims and families of deceased loved ones who are involved in these cases.

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<sup>145</sup> See generally Bull, *supra* note 3.

<sup>146</sup> *Id.* at 1015.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 1031.

<sup>150</sup> *Id.* at 1016.

<sup>151</sup> *Id.* at 1017.

It is understandable that there may be some conflicting goals and objectives of law enforcement on the matter. On one hand, police officers are trained to enforce and uphold the law.<sup>152</sup> Officers have a responsibility to serve and protect their communities.<sup>153</sup> The U.S. Bureau of Labor Statistics states that “police officers protect lives and property. . . [and]. . . detectives and criminal investigators gather facts and collect evidence of possible crimes.”<sup>154</sup> Leaders in law enforcement must ensure that officers execute their duties efficiently and effectively.<sup>155</sup> These duties range from assisting in emergency scenes, monitoring roadways, patrolling public areas, and managing more egregious crimes such as murder, rape, or robberies.<sup>156</sup> These acts of service are vital to the public at large and are a crucial part of maintaining a well-functioning and regulated society.<sup>157</sup>

On the other hand, police officers have a duty to act as a reasonably prudent police officer in the execution of their duties.<sup>158</sup> It is no coincidence that SLMPD policies emphasize that a pursuit may be initiated if the officer believes that the suspect has “committed a *felony involving the use or threatened use of deadly force and a delay in apprehending the suspect(s) will pose a danger to other people.*”<sup>159</sup> The police department’s apprehension to allow officers to utilize this tactic without pause demonstrates its knowledge that it is an inherently dangerous activity that may result in harm to the officer, suspect, innocent bystander, or property.<sup>160</sup> The introduction of the SLMPD policies warns the public that there are not many policing tactics more potentially dangerous than engaging in pursuits.<sup>161</sup> Despite these policies, law enforcement has been known to pursue suspects for minor and petty crimes.<sup>162</sup> For example, in California, it has been reported that “more than

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<sup>152</sup> Ritika Sharma, *Who is Police? What are Powers & Duties of Police?*, LAW TIMES J. (Dec. 27, 2019), <https://lawtimesjournal.in/who-is-police-what-are-powers-duties-of-police/> [<https://perma.cc/TD5X-UGKU>].

<sup>153</sup> *Id.*

<sup>154</sup> *Criminal Justice: Law Enforcement*, WAYNE CNTY. CMTY. COLL. DIST. (Oct. 2020), [https://www.wcccd.edu/academic/pdfs/programs/Criminal\\_Just-Law\\_Enf.pdf](https://www.wcccd.edu/academic/pdfs/programs/Criminal_Just-Law_Enf.pdf) [<https://perma.cc/LY24-MQK7>].

<sup>155</sup> Sharma, *supra* note 152.

<sup>156</sup> *What Does a Police Officer Do?*, KHAN ACAD., <https://www.khanacademy.org/college-careers-more/career-content/serve-your-community/career-profile-police-officer/a/what-does-a-police-officer-do> [<https://perma.cc/6NVV-UWL2>] (last visited Jan. 8, 2024).

<sup>157</sup> Sharma, *supra* note 152.

<sup>158</sup> SLMPD SPECIAL ORD. 5-05, *supra* note 77.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Molly Olmstead, *Why Police Pursuits Keep Killing People*, SLATE (July 8, 2021, 6:15 PM), <https://slate.com/news-and-politics/2021/07/police-pursuit-high-speed-car-chase-deaths.html> [<https://perma.cc/CN4L-3RZJ>].

89 percent of California police chases from 2002 to 2014 were for vehicle-related violations. The crimes are rarely violent.”<sup>163</sup>

Overall, it is the duty of a police officer to weigh the consequences of her actions against the need to apprehend a suspect.<sup>164</sup> Oftentimes, these decisions take place on an accelerated timeframe, but it is for these reasons that officers undergo extensive and comprehensive training to develop discernment and sound judgment when faced with circumstances such as the one at issue in *Harris v. City of St. Louis*.<sup>165</sup> The SLMPD recognizes the difficulty inherent in this balancing act, and it provides clear guidelines that its officers should follow.<sup>166</sup>

## VI. CONCLUSION

In *Harris v. City of St. Louis*, the Missouri Court of Appeals, Eastern District, engaged in a proximate cause “analysis” that was incongruent with existing theory on tort law causation.<sup>167</sup> Given the dangerous nature of the pursuit in this case, it was foreseeable that the police officers’ negligent act of failing to terminate the pursuit would result in a fatal

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<sup>163</sup> *Id.*

<sup>164</sup> SLMPD policies specifically demand that safety be a primary concern during pursuit of a suspect:

[S]afety is the overriding concern during pursuits. Officers must consider that other Officers are responding to assist and that unaware populations are both drivers and pedestrians along the route. The decision to continue a pursuit must constantly be weighed against these safety concerns. When the risks of injury to anyone become greater than the consequences of the apprehension, then the pursuit is no longer reasonable.

SLMPD SPECIAL ORD. 5-05, *supra* note 77.

SLMPD also states that:

Pursuing Officers and the responsible Supervisor/Commander must give strong consideration to terminating the pursuit when a potentially hazardous situation develops, involving the following: excessive speed; dangerous driving maneuvers; etc.; road, weather and traffic conditions; area of the city (school zone, narrow residential street, heavy pedestrian/vehicle traffic); restricted visibility due to time of day; Officer unfamiliarity with area; fleeing motorist proceeds the wrong way on roadway; or vehicle operated by juvenile whose actions reflect a lack of appreciation of danger involved.

*Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> See *Harris v. City of St. Louis*, 658 S.W.3d 49 (Mo. Ct. App. 2022).

vehicular accident. Furthermore, the plaintiffs set forth well-pleaded facts that established a viable claim for negligence against the City of St. Louis and its employees. It follows that the court should have reversed the trial court's grant of the defendants' motion for judgment on the pleadings and remanded the case to the trial court for further proceedings.

Bystanders should not be "caught in the crossfire" of poor judgment by police officers and the recklessness of a suspect. In the instance that they are, this chilling ruling demonstrates the legal hurdles that innocent victims of senseless highspeed pursuits might face when seeking remedies against law enforcement. On the issue of police pursuits, society should not only be concerned with the negligence of fleeing suspects but also the potential negligence of officers. The facts of *Harris v. City of St. Louis* should have been presented to a jury, not only for the victims of the highspeed pursuit, but also to send a clear message that the potential negligence of *all* individuals, including law enforcement, is not immune from the justice system.