IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANDRE SWIFT, as Administrator Ad Litem of the ESTATE OF JANEISHA ROGERS, and as next friend and guardian of A.S., A.S., A.R., and A.R., four minor children,

Plaintiff,

v.

Case No. 2:20-cv-2758-MSN-tmp
JURY DEMAND

OLD DOMINION FREIGHT LINES, INC. and GEORGE R. ALLISON, JR.,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendants' Motion for Summary Judgment[1] ("Motion") (ECF No. 50) filed October 22, 2021. Plaintiff responded in opposition on November 18, 2021 (ECF No. 55). Defendants filed a reply in support on November 30, 2021. For the reasons set forth below, Defendants' Motion is **GRANTED** in part and **DENIED** in part.

BACKGROUND

This lawsuit arises out of a motor vehicle accident on February 13, 2020 on Shelby Drive in Memphis, Tennessee. (ECF No. 55-1 at PageID 318.) On that day, Janeisha Rogers ("Ms. Rogers") and her four children were driving westbound on Shelby Drive, approaching the intersection of Shelby Drive and Boeingshire, and Defendant George Allison ("Mr. Allison") was

[1] The Motion is an amended and corrected motion that replaced in its entirety motion initially filed incorrectly (*see* ECF No. 49).

driving eastbound on Shelby Drive in a tractor trailer owned by Defendant Old Dominion Freight Line, Inc. ("Old Dominion"). (*Id.*) As Mr. Allison approached the intersection of Shelby Drive and Boeingshire, the traffic light was green and remained green as he went through the intersection. (ECF No. 55-1 at PageID 319.) As Mr. Allison proceeded through the intersection, two vehicles ahead of him passed Ms. Rogers, after which she began turning left across oncoming traffic towards the driveway of a gas station. (*Id.*; ECF No. 56-1 at PageID 416.) Three seconds later, Ms. Rogers' vehicle was hit by the Old Dominion tractor trailer driven by Mr. Allison. (ECF No. 56-1 at PageID 417.) In other words, from the time Ms. Rogers began her left turn to the time of impact was three seconds; Mr. Allison thus had three seconds to perceive, react, and slow to avoid the collision. (ECF No. 56-1 at PageID 417.) Mr. Allison did not apply his brakes until within the last second before the collision. (*Id.*) An additional one second was needed for Ms. Rogers to complete her turn into the gas station's driveway. (*Id.*)

In the seconds before the collision, Mr. Allison was driving at 46 miles per hour along Shelby Drive where the posted speed limit was 40 miles per hour. (ECF No. 55-1 at PageID 320.) It is undisputed that a driver with an average perception-reaction time of two seconds, traveling at 40 miles per hour in Mr. Allison's vehicle would have had sufficient time to avoid the collision. (ECF No. 56-1 at PageID 417.) Because Mr. Allison was traveling at 46 miles per hour, it is undisputed that he needed to have an above-average perception reaction time to avoid the collision. (*Id.*)

According to Defendants, there is no evidence that Ms. Rogers activated her left turn signal before she attempted to make the left turn. (ECF No. 55-1 at PageID 319.) Plaintiff, on the other hand, disputes this and argues the evidence is inconclusive as to whether Ms. Rogers activated her left turn signal. (*Id.*) Mr. Allison did not see Mr. Rogers begin her turn, as he turned his eyes

away from his forward view when he was coming through the intersection at Shelby Drive and Boeingshire. (ECF No. 56-1 at PageID 418.) According to Defendants, at the time Ms. Rogers began her left turn, the Old Dominion tractor trailer driven by Mr. Allison was close enough to the entrance of the gas station driveway to constitute an "immediate hazard" to Ms. Rogers. (ECF No. 55-1 at PageID 320; ECF No. 50-3 at PageID 228.)

As of the date of the accident, Mr. Allison had more than 40 years of experience as a commercial truck driver, with more than 30 of those years as an employee of Old Dominion. (ECF No. 55-1 at PageID 318.) Mr. Allison had a valid commercial driver's license from the state of Mississippi on the date of the accident, and there were no mechanical problems with the Old Dominion tractor trailer. (*Id.* at PageID 319.) Old Dominion holds monthly safety meetings that Mr. Allison attends. (*Id.* at PageID 319.) There are no allegations or evidence that Mr. Allison was under the influence of drugs or alcohol at the time of the accident. (*Id.* at PageID 320.)

Plaintiff alleges that Ms. Rogers died, and her four children suffered severe personal injuries, because of the collision. (ECF No. 26 at PageID 97.) In support of their Motion, Defendants have submitted a video from a dash camera on the Old Dominion tractor trailer driven by Mr. Allison. (ECF No. 55-1 at PageID 320.)

JURISDICTION & CHOICE OF LAW

The Court has diversity jurisdiction under 28 U.S.C. § 1332. Federal district courts have original jurisdiction of all civil actions between citizens of different states "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a)(1).

Plaintiff is Administrator Ad Litem for the Estate of Janeisha Rogers, who was a citizen of Tennessee. (*See* ECF No. 58 at PageID 423.) Plaintiff is also the next friend and guardian of

A.S., A.S., A.R., and A.R., four minor children, all of whom are citizens of Tennessee. (*See id.*) Defendant George Allison is a citizen of Mississippi (*see* ECF No. 26 at PageID 96), and Defendant Old Dominion Freight Lines, Inc. is a citizen of Virginia (*see* ECF No. 26 at PageID 97) and North Carolina (*see* ECF No. 58 at PageID 424). The parties are completely diverse.

State substantive law applies to state law claims brought in federal court. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). Where there is no dispute that a certain state's substantive law applies, the Court will not conduct a choice-of-law analysis *sua sponte*. *See GBJ Corp. v. E. Ohio Paving Co.*, 139 F.3d 1080, 1085 (6th Cir. 1998). The parties assumed in their motion, response, reply, and in their respective memoranda, that Tennessee substantive law applies to Plaintiff's claims and have made their arguments accordingly. Thus, the Court will apply Tennessee substantive law. In applying Tennessee substantive law, this Court is "bound by controlling decisions" of the Tennessee Supreme Court, "and in the absence of a decision addressing the issue, must predict how that court would rule by looking to 'all available data.'" *Fox v. Amazon.com, Inc.*, 930 F.3d 415, 422 (6th Cir. 2019) (quoting *Berrington v. Wal-Mart Stores, Inc.*, 696 F.3d 604, 607 (6th Cir. 2012)).

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 permits a party to move for summary judgment — and the Court to grant summary judgment — "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting the presence or absence of genuine issues of material facts must support its position either by "citing to particular parts of materials in the record," including depositions, documents, affidavits or declarations, stipulations, or other materials, or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse

party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In ruling on a motion for summary judgment, the Court must view the facts contained in the record and all inferences that can be drawn from those facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001). The Court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of any matter in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party may discharge this burden either by producing evidence that demonstrates the absence of a genuine issue of material fact or simply "by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Where the movant has satisfied this burden, the nonmoving party cannot "rest upon its . . . pleadings, but rather must set forth specific facts showing that there is a genuine issue for trial." *Moldowan v. City of Warren*, 578 F.3d 351, 374 (6th Cir. 2009) (citing *Matsushita*, 475 U.S. at 586; Fed. R. Civ. P. 56). The nonmoving party must present sufficient probative evidence supporting its claim that disputes over material facts remain and must be resolved by a judge or jury at trial. *Anderson*, 477 U.S. at 248–49 (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253 (1968)); *see also White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 475–76 (6th Cir. 2010). A mere scintilla of evidence is not enough; there must be evidence from which a jury could reasonably find in favor of the nonmoving party. *Anderson*, 477 U.S. at 252; *Moldowan*, 578 F.3d at 374.

The Court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict

for the nonmoving party." *Anderson*, 477 U.S. at 248. Such a determination requires that the Court "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Id.* at 254. Thus, if the plaintiff must ultimately prove its case at trial by a preponderance of the evidence, on a motion for summary judgment the Court must determine whether a jury could reasonably find that the plaintiff's factual contentions are true by a preponderance of the evidence. *See id.* at 252–53.

Finally, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the movant is entitled to summary judgment. *Celotex*, 477 U.S. at 323. The Court must construe Rule 56 with due regard not only for the rights of those "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis." *Id.* at 327.

DISCUSSION

Defendants' Motion argues they are entitled to summary judgment on several alternative grounds. First, Defendants argue they are entitled to summary judgment on all Plaintiff's claims because no reasonable jury could conclude an act or omission on the part of either Defendant was an actual or proximate cause of the collision. (ECF No. 50 at PageID 199; ECF No. 50-1 at PageID 205–09.) Alternatively, Defendants argue they are entitled to summary judgment on Plaintiff's wrongful death claim because no reasonable jury could find Ms. Rogers was less than 50 percent at fault for the collision that resulted in her death. (ECF No. 50 at PageID 199; ECF No. 50-1 at PageID 209–10.) Next, Defendants argue Plaintiff's direct, non-vicarious negligence claims against Old Dominion should be dismissed under the preemption rule, or if the Court does not

apply the preemption rule, then because there are no allegations or proof that Old Dominion knew or should have known Mr. Allison was an unfit employee likely to cause harm to others. (ECF No. 50 at PageID 199; ECF No. 50-1 at PageID 210–18.) Finally, Defendants argue they are entitled to summary judgment as to Plaintiff's punitive damages claim because there is no evidence of egregious or reckless conduct by Mr. Allison or Old Dominion. (ECF No. 50 at PageID 199; ECF No. 50-1 at PageID 218–21.) The Court addresses each of these arguments in turn.

A. Negligence Claims—Actual or Proximate Cause of the Collision

Under Tennessee law, a plaintiff must establish the following elements for a claim of negligence: (1) a duty of care owed by the defendant to plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause. *King v. Anderson Cty.*, 419 S.W.3d 232, 246 (Tenn. 2013) (citing *Giggers v. Memphis Hous. Authority*, 277 S.W.3d 359, 364 (Tenn. 2009)). Causation in fact and proximate cause are distinct elements of a negligence claim and a plaintiff must prove both by a preponderance of the evidence. *Kilpatrick v. Bryant*, 868 S.W.2d 594, 598 (Tenn. 1993). "Causation, or cause in fact, means that the injury or harm would not have occurred 'but for' the defendants' negligent conduct." *Kilpatrick*, 868 S.W.2d at 598. Once causation in fact is established, proximate cause asks whether the law should "extend responsibility" for negligent conduct "to the consequences that have occurred." *King v. Anderson Cnty.*, 419 S.W.3d 232, 246 (Tenn. 2013) (quoting *Kilpatrick*, 868 S.W.2d at 598). The Tennessee Supreme Court has set forth a three-pronged test to be used to determine proximate cause: (1) the tortfeasor's conduct must have been a "substantial factor" in bringing about the harm being complained of; and (2) there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the action

could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence. *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991). Cause in fact and proximate cause are "ordinarily jury questions, unless the uncontroverted facts and inferences to be drawn from them make it so clear that all reasonable persons must agree on the proper outcome." *Haynes v. Hamilton County*, 883 S.W.2d 606, 612 (Tenn. 1994) (citing *McClenahan*, 806 S.W.2d at 775 (Tenn. 1991)).

Defendants and Plaintiff both point to Tenn. Code Ann. § 55-8-129, which provides as follows:

> (a) The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but the driver, having so yielded and having given a signal when and as required by this chapter, may make the left turn, and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.
>
> (b) As used in this section, "drive" and "intersection" have the same meanings as defined in § 55-8-128.

Defendants argue that the Old Dominion tractor trailer driver by Mr. Allison constituted an "immediate hazard," and Ms. Rogers' failure to yield the right-of-way to Mr. Allison was the actual and proximate cause of the collision in this matter. They submit that the "video of the accident speaks for itself and supports entry of summary judgment in favor of Defendants." (ECF No. 50-1 at PageID 206.)

The video submitted by Defendants is indeed compelling evidence in this matter. However, the Court cannot find that there is no dispute of material fact as to whether Ms. Rogers' or Mr. Allison's actions were a "substantial factor" in causing the collision here. Specifically, there is dispute as to whether Mr. Allison's speed in the moments before the crash, or his diverting his attention away from his forward view, were substantial factors causing the collision. The Court

thus cannot find there is no dispute of material fact on the issue of proximate cause—such a finding would require this Court to impermissibly weigh the evidence. To the extent Defendants' Motion seeks summary judgment on all Plaintiff's claims based on there being no genuine dispute of fact as to actual or proximate cause, the Motion is **DENIED**.

B. Wrongful Death Claim—Comparative Fault

Alternatively, Defendants argue that they are entitled to summary judgment as to the wrongful death claim for Ms. Rogers based on the affirmative defense of comparative negligence because reasonable minds could not differ in finding Ms. Rogers at least 50 percent at fault for the accident that caused her death. (*See* ECF No. 50-1 at PageID 209.)

Tennessee has "adopted a system of modified comparative fault whereby a plaintiff who is less than fifty percent (50%) at fault may recover damages in an amount reduced by the percentage of fault assigned to the plaintiff." *Ali v. Fisher*, 145 S.W.3d 557, 561 (Tenn. 2004) (citing *McIntyre v. Balentine*, 833 S.W.2d 52, 57 (Tenn. 1992)). "[I]n a vast majority of cases, the comparison and allocation of fault is a question of fact to be decided by the finder-of-fact . . . ." *Henley v. Amacher*, 2002 WL 1000402, *6 (Tenn. Ct. App. Jan. 28, 2002) (citing *Brown v. Wal-Mart Discount Cities*, 12 S.W.3d 785, 789 (Tenn. 2000)). "The task of comparing and allocating fault may be taken from the jury only when it can be determined beyond question (or alternatively, when reasonable minds cannot differ) that the plaintiff's fault is equal to or greater than the defendant's." *Id.* (citations omitted).

Allocation of fault in this matter would require this Court to resolve factual disputes, for example, whether Ms. Rogers activated her left turn signal, and to impermissibly weigh the evidence. Thus, to the extent Defendants' Motion seeks summary judgment on the wrongful death claim for Ms. Rogers based on the doctrine of comparative fault, it is **DENIED**.

C. Direct Negligence Claims Against Old Dominion

Next, Defendants argue the direct negligence claims against Old Dominion should be dismissed either under the preemption rule because Old Dominion has admitted vicarious liability under Plaintiff's *respondeat superi*or theory, or alternatively, because Plaintiff has not presented evidence of any negligent hiring, training, or supervision by Old Dominion. (*See* ECF No. 50-1 at PageID 210–18.)

Turning to Defendants' first argument, there is no controlling decision from the Tennessee Supreme Court addressing the preemption rule, and this Court must therefore look at all available data and attempt to predict how that court might rule. Two federal district courts in Tennessee have previously addressed this issue, and both concluded that the Tennessee Supreme Court would adopt the majority view and apply the preemption rule where an employer has admitted *respondeat superior* liability. *See Ryans v. Koch Foods, LLC*, No. 1:13-cv-234-SKL, 2015 WL 12942221, at *8–9 (E.D. Tenn. July 8, 2015); *Freeman v. Paddack Heavy Transp., Inc.*, No. 3:20-cv-00505, 2020 WL 7399026, at *1–3 (M.D. Tenn. Dec. 16, 2020).

As discussed in *Ryans* and *Freeman*, the majority view applies the "preemption rule" to prevent a plaintiff from pursuing direct negligence claims against an employer when the employer has admitted vicarious liability under *respondeat superior*. *Ryans*, 2015 WL 12942221, at *8; *Freeman*, 2020 WL 7399026, at *1. The rationale behind the rule is that when vicarious liability is admitted, allowing the plaintiff to pursue direct negligence claims against the employer does not enlarge the plaintiff's potential recovery and requires the introduction of proof that may be unduly prejudicial to the defendant. *Ryans*, 2015 WL 12942221, at *8; *Freeman*, 2020 WL 7399026, at *1.

In predicting whether the Tennessee Supreme Court would adopt the preemption rule, the courts in *Ryans* and *Freeman* found helpful the Tennessee Supreme Court case, *Ali v. Fisher*, 145 S.W.3d 557 (Tenn. 2004). In *Ali*, the Tennessee Supreme Court noted that it had "only rarely departed from the allocation of fault required under the system of comparative fault," but that one exception would be "where vicarious liability is based on an agency relationship between a principal and the principal's negligent agent, such as . . . *respondeat superior*." 145 S.W.3d at 564. Both *Ryans* and *Freeman* found that the Tennessee Supreme Court's recognition of this exception indicated the court would likely adopt the preemption rule. *Ryans*, 2015 WL 12942221, at *9; *Freeman*, 2020 WL 7399026, at *3. *Freeman* further notes that multiple states with comparative fault systems have also adopted the preemption rule, including California, Missouri, Georgia, Illinois, Texas, and Wyoming. *Freeman*, 2020 WL 7399026, at *3.

This Court finds the analysis set forth in *Ryans* and *Freeman* persuasive and similarly concludes that, based on available data, it is likely the Tennessee Supreme Court would adopt the preemption rule. Of course, a prerequisite for application of the preemption rule is that the employer has admitted vicarious liability for the actions of its employee—something that Plaintiff appears to dispute in this matter. (*See* ECF No. 55-2 at PageID 330.) This Court, however, disagrees with Plaintiff's interpretation; Defendants admitted in their Answer that Mr. Allison was driving in the course and scope of his employment with Old Dominion and was driving one of Old Dominion's vehicles at the time of the accident; Defendants have also admitted the agency relationship between Mr. Allison and Old Dominion. (*See* ECF No. 9 at PageID 19, 23.) Defendants' admissions on these issues were also restated in their Memorandum in support of their Motion and in their Reply. (*See* ECF No. 50-1 at PageID 214; ECF No. 56 at PageID 412–13.)

This Court accepts Old Dominion's admission of vicarious liability and will enforce this admission as appropriate or necessary.

One final issue this Court must address before applying the preemption rule in this matter is Plaintiff's claim for punitive damages against Mr. Allison, with Old Dominion being vicariously liable for those punitive damages. (*See* ECF No. 58 at PageID 425–26.) As the court in *Freeman* noted, several jurisdictions that have adopted the preemption rule provide an exception where the plaintiff is seeking punitive damages from the employer. *See Freeman*, 2020 WL 7399026, at *2 (collecting cases). However, as explained in Section D below, this Court finds that Defendants are entitled to summary judgment on Plaintiff's punitive damages claims; as a result, this Court need not predict whether the Tennessee Supreme Court would also adopt the punitive damages exception to the preemption rule. Thus, because Old Dominion has admitted vicarious liability for any negligence attributed to Mr. Allison, summary judgment on Plaintiff's direct negligence claims is appropriate based on the preemption rule.[2] Defendants' Motion is **GRANTED** as to Plaintiff's direct negligence claims, and those claims are **DISMISSED**.

D. Punitive Damages Claims

Punitive damages in Tennessee are governed by statute, which provides that in civil actions seeking punitive damages, those damages may be awarded only "if the claimant proves by clear and convincing evidence that the defendant against whom punitive damages are sought acted maliciously, intentionally, fraudulently or recklessly . . . ." Tenn. Code. Ann. § 29-39-104(a)(1). As relevant to Old Dominion, punitive damages based on vicarious liability must be supported by

[2] Because this Court is granting Defendants' Motion on Plaintiff's direct negligence claims under the application of the preemption rule, the Court need not address Defendants' alternative argument that Plaintiff has not presented evidence of any negligent hiring, training, or supervision by Old Dominion.

clear and convincing evidence that the "defendant was reckless in hiring, retaining, supervising or training the agent or employee and that recklessness was the proximate cause of the act or omission that caused the loss or injury . . . ." *Id.* § 29-39-104(g)(1)(B). The culpability of a defendant who is alleged to be vicariously liable must be determined separately from the agent, employee, or representative. *Id.* § 29-39-104(a)(9). Defendants argue that Plaintiff has failed to present sufficient probative evidence to support his claim for punitive damages against either Mr. Allison or Old Dominion, and this Court agrees.

First, as to Mr. Allison, Plaintiff argues that he acted recklessly by speeding and failing to keep a proper lookout. (*See* ECF No. 55-2 at PageID 331.) "A person acts recklessly when the person is aware of, but consciously disregards, a *substantial* and unjustifiable risk of such nature that its disregard constitutes a *gross deviation* from the standard of care that an ordinary person would exercise under all the circumstances." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992) (emphasis added). In the context of vehicle accidents, Tennessee case law provides only a few examples of conduct supporting an award of punitive damages. For example, in *Sakamoto v. N.A.B. Trucking Co.*, punitive damages were approved against a truck driver and his employer when the driver, who was a habitual user of amphetamines and had been without sleep for more than 40 hours, attempted to turn his truck around on an interstate highway. The truck driver was attempting to travel in the wrong direction to an interchange he had passed just before his truck broke down, and while the truck driver was making his turn, the plaintiff ran into the driver's truck. 717 F.2d 1000 (6th Cir. 1983). In *Honaker v. Leonard*, a punitive damages award was upheld against a defendant who was drag racing on the highway. 325 F. Supp. 212, 214 (E.D. Tenn. 1971). Punitive damages may also be warranted in cases involving an intoxicated driver. *See Perry v. Dewey*, Appeal No. 02A01-9406-cv-00142, 1995 WL 422660, *3 (Tenn. Ct. App. July

18, 1995) (accident caused by a drunk driver). However, acts of simple negligence will not support and award of punitive damages. *See Leap v. Malone*, No. 95-6470, 1996 WL 742306, *1–2 (6th Cir. Dec. 23, 1996) (truck driver was clearly negligent in making sudden left turn in front of an oncoming car but had not engaged in the type of "egregious" conduct for which a jury may consider awarding punitive damages).

Looking at the specific conduct here, Mr. Allison was travelling at six miles per hour over the posted speed limit of 40 miles per hour on a 3-lane, non-residential roadway. Mr. Allison also turned his eyes away from his forward view and "glanced right" "watching for traffic that could possibly come out while coming up the road through the intersection." (ECF No. 55-6 at PageID 399.) The Court finds these acts insufficient as a matter of law to support an award of punitive damages as they are not egregious conduct and do not represent a "gross deviation" from the standard of care. This is consistent with case law from other jurisdictions finding such actions may constitute ordinary negligence but do not warrant punitive damages. *See Hay v. Shirey*, Case No. 1:19 CV 2645, 2021 WL 2355582, at *2 (N.D. Ohio June 8, 2021) ("unspecified speeding, traveling within 10-12 feet of a vehicle, and an 'appearance of frustration' are insufficient as a matter of law to warrant imposition of punitive damages"); *Bizzel v. Transp. Corp. of America, Inc.*, 2017 WL 3381358, at *4 (E.D. Ark. Aug. 4, 2017) (evidence that defendant was travelling three miles per hour over posted speed limit and using "low beams" at night was not sufficiently reckless to justify award of punitive damages); *McCullough v. Peeples*, No. 14-123, 2015 WL 1000223, at *7 (W.D. Pa. Mar. 5, 2015) (dismissing claims for punitive damages against both the truck driver and employer because the plaintiff's allegations of excessive speed, lack of control, and careless operation given weather conditions sounded in negligence); *Ballard v. Keen Transport, Inc.*, No. 4:10-cv-54, 2011 WL 203378, at *4 (S.D. Ga. Jan. 19, 2011) (punitive

damages not warranted where defendant was travelling 11 mph above speed limit, following too closely, and failed to keep a proper lookout); *Pancrazio v. Greyhound Lines, Inc.*, 2008 WL 11509793, at *3 (D.N.J. Apr. 25, 2008) (evidence defendant was speeding on a wet road does not support an award of punitive damages); *Kinney v. Butcher*, 131 S.W.3d 357, 359 (Ky. App. 2004) (speeding 10 mph over posted speed limit and failing to complete pass before entering a no-passing zone constituted ordinary negligence); *see also Ranburger v. Southern Pacific Transp. Co.*, 157 Ariz. 551, 554 (Ariz. 1988) ("exceeding the speed limit is insufficient by itself to support punitive damages"). Thus, Defendants' Motion is **GRANTED** as to Plaintiff's punitive damages claim against Mr. Allison.

As for Old Dominion, Plaintiff argues that it was "aware of [Mr.] Allison's unfitness for the job, but kept clearing him to drive after every mistake . . . ." (ECF No. 55-2 at PageID 331.) Plaintiff does not provide any citations to the record in support his argument, nor are there any facts in Defendants' or Plaintiff's submitted statements of undisputed material fact regarding Mr. Allison's driving record or alleged history of "mistakes." Plaintiff included with his response a copy of documents produced by Defendants, including a memo on Old Dominion letterhead to Mr. Allison from Old Dominion's Vice President of Safety listing Mr. Allison's accident history. (*See* ECF No. 55-5 at PageID 383.) This memo lists 11 accidents (not including the one at issue in this matter) over the course of Mr. Allison's 30-year history with Old Dominion. (*Id.*) Documents included after this memo appear to be specific reports for some of the accidents listed in the memo. (*See id.* at PageID 384–96.) Plaintiff has not pointed to anything specific in these documents supporting that Old Dominion was reckless in hiring, retaining, supervising, or training Mr. Allison. In fact, what this Court can glean from these records is that at least two of these incidents were not accidents involving collisions with other vehicles, but instead involved debris from other

vehicles causing damage to Mr. Allison's truck (*see* ECF No. 55-5 at PageID 384, "HIT CHAIR THAT FELL OFF #2"; *see id.* at PageID 387, "AD#2 hit a manhole and a wrench from the bed of the truck flew out and stuck in . . . the bumper of #1 and #2 did not stop"), one has a notation as a "mechanical failure/defect" (*see id.* at PageID 396), and three reflect a notation of "hit by vehicle changing lanes" (*see id.*). Further, it appears only one of the reports reflects an accident resulting in an injury (*see id.* at PageID 395 listing "back pain"), and there is only a single listing of a speeding violation from 1994 (*see id.* at PageID 396). In sum, Plaintiff has not set forth specific facts supported by evidence from which a reasonable jury could find that Old Dominion was reckless in hiring, retaining, supervising, or training Mr. Allison. Defendants' Motion is therefore **GRANTED** as to Plaintiff's punitive damages claim against Old Dominion.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Summary Judgment is **DENIED** as to all negligence claims based on a dispute as to actual or proximate cause; **DENIED** as to Plaintiff's wrongful death claim based on allocation of comparative fault; **GRANTED** as to Plaintiff's direct negligence claims against Old Dominion; and **GRANTED** as to Plaintiff's punitive damages claims against Mr. Allison and Old Dominion. Plaintiff's direct negligence claims against Old Dominion and punitive damages claims against Mr. Allison and Old Dominion are **DISMISSED**.

IT IS SO ORDERED, this 31st day of January 2022.

s/ Mark S. Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE