

IN THE SUPREME COURT OF OHIO

CASE NO. _____

On Appeal From The
Court Of Appeals Eighth Judicial District
Cuyahoga County, Ohio
Court of Appeals Case No. CA-06-87476

07-0056

JOHN K. O'TOOLE, Personal Representative and
Administrator for the Estate of Sydney Sawyer

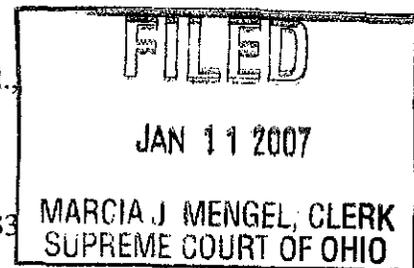
Plaintiff-Appellee,

vs.

WILLIAM DENIHAN, et al.,

Defendants-Appellants.

TRIAL COURT NO.: 450833



MEMORANDUM IN SUPPORT OF JURISDICTION OF PUBLIC CHILDREN SERVICES
ASSOCIATION OF OHIO

J. Eric Holloway (0063857)
EricHolloway@IsaacBrant.com
Isaac, Brant, Ledman & Teetor, LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215
614-221-2121
614-365-9516
*Counsel for Amicus Curiae Public Children
Services Association of Ohio*

David Ross (0005203)
Michelle J. Sheehan Esq. (0062548)
REMINGER & REMINGER CO., L.P.A.
1400 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115-1093
*Counsel for Defendants-Appellees, DCFS,
William Denihan, Kamesha Duncan*

John W. Martin
John W. Martin Co., L.P.A.
800 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113

William D. Beyer
Joan E. Pettinelli
Wuliger, Fadel & Beyer
1340 Sumner Court
Cleveland, Ohio 44115
Counsel for Plaintiff-Appellant

James C. Cochran
Assistant Prosecuting Attorney
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
*Counsel for Defendant-Appellee Tallis George
Munro*

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I. EXPLANATION OF WHY THIS CASE IS A MATTER OF PUBLIC OR GREAT GENERAL INTEREST

For the purposes of this Memorandum, the Public Children Services Association of Ohio (hereinafter "PCSAO") incorporates herein, the explanation of why this case is of public or great general interest, as set forth by Appellants Department of Children and Family Services, DCFS Executive Director William Denihan and Case Worker Kamesha Duncan. PCSAO is a proactive coalition of Public Children Services Agencies that promotes the development of sound public policy and program excellence for safe children, stable families, and supportive communities. In the pursuit of accomplishing its vision for children, families and communities, it is imperative that Children Services Agencies throughout Ohio be able to operate without facing the devastating risk of civil and criminal liability for performing their essential job functions.

Each year, public children services employees place themselves in harms way on tens of thousands of occasions as they fulfill their duties to the children of Ohio. These employees are often faced with hostile parents, guardians and family members as the employees conduct their investigations into suspected child abuse and neglect. These parents, guardians and family members are often uncooperative if not entirely antagonistic to the investigation process. Indeed, the case at bar involved an uncooperative parent. Nonetheless, public children service employees continue their investigations to protect the safety and lives of children of Ohio while having to maintain a respect and balance with parental rights.

Recent data reflects that, in 2003, public children services employees conducted 87,158 investigations into child abuse and neglect in the State of Ohio.¹ The following reflects the number of investigations conducted in the respective counties in 2003:

- Cuyahoga 15,809;
- Franklin 8,577;
- Hamilton 6,546;
- Montgomery 3,490;
- Lucas 4,634;
- Summit 4,710.²

Public children service agencies are supported primarily through local property tax levies or county general funds, with limited and diminishing federal funds and minimal state support. The budgets for these agencies are forecast based upon existing duties and anticipated costs of providing services. Any change in these duties or in the financial exposure of the agencies could prove catastrophic to their operations and services they provide.

In this case, the Eighth District Court of Appeals decision imposes duties upon public children services agencies that are beyond the scope of the governing statute – R.C. 2151.421. Specifically, the Court of Appeals decision imposes a duty on public children services agencies to report cases of suspected abuse to a municipal or county peace officer and, correspondingly, the agency is subject to the criminal penalties set forth in R.C. 2151.99. See *O’Toole v. Denihan, et al.* 2006-Ohio-6022, at ¶14. However, R.C. 2151.421 imposes no such duty, upon a public children services agency, to report suspected abuse to law enforcement officials.

The Court of Appeals further committed error by concluding that all public children services agencies and their employees are *in loco parentis* to every child they investigate. Appellees allege in their Complaint that all Defendants breached their duty to provide for the

¹ See <http://www.pcsao.org/factbook/ohio%202005.pdf>

² See <http://www.pcsao.org/factbook2005.htm>. Go to the county profiles to select individual county statistics.

safety of a minor, pursuant to R.C. 2919.22, as *in loco parentis*. Complaint at ¶ 3. However, the Court of Appeals failed to address Appellants' arguments that *in loco parentis* does not apply to children services agencies and their employees during the course of an investigation. Accordingly, having reversed the trial court's decision in its entirety, the Court of Appeals implicitly adopts the proposition that children services agencies and their employees are *in loco parentis* of a child while an investigation is ongoing. This conclusion is erroneous and is potentially devastating to children services agencies as it exposes them to criminal penalties, pursuant to R.C. 2919.22, for statutorily non-existent duties.

Finally, the Court of Appeals decision concluded that this Court's decision in *Marshall v. Montgomery County Children Services Board*, 92 Ohio St.3d 848, 2001-Ohio-209, was distinguishable from the case at bar as it relates to the immunities provided by R.C. Chapter 2744. Specifically, the Court of Appeals held that "genuine issues of material fact remain concerning the investigation of Denihan and DCFS" with regard to the allegations of recklessness in the investigation process. *O'Toole v. Denihan, et al.* 2006-Ohio-6022, at ¶16. (Emphasis added.) However, this Court held in *Marshall, supra*, that "R.C. 4121.421 does not expressly impose liability for failure to investigate reports of child abuse." *Marshall v. Montgomery County Children Services Board*, 92 Ohio St.3d 348, 2001-Ohio-209, syllabus. Accordingly, the Court of Appeals erred by reversing the Trial Court's grant of summary judgment on the issue of statutory immunity.

The Court of Appeals' decision impacts each and every public children services agency in this state. Every year, thousands of investigations are initiated into suspected abuse or neglect of children throughout Ohio. Under the Court of Appeals' rule, children services agencies in Cuyhoga County and throughout Ohio could face exposure to liability merely because a paper

file was created in the office with no time to have conducted the first interview, let alone decide whether to remove a child from a dangerous situation.

On a practical level, the instant rule also creates increased burdens for the individual worker at public children services agencies. Despite such increased burdens, the rule creates no corresponding increase in either compensation or overall job satisfaction for such workers. While such concerns typically do not guide the dedicated worker at a children services agency, such a rule would tend to drive out some workers who know the law has imposed upon them too great of a duty, knowing that they have their own individual obligations to care for their own families through the typically unheralded salaries earned at a children services agency. With fewer workers, those who remain would face even greater challenges in pursuing the public goal of ensuring the well being of children and families throughout the state.

The decision creates duties that exist nowhere in statute and expose public children services agencies and their employees to civil and criminal penalties that were not intended by the Legislature. Moreover, the Court of Appeals decision undermines the immunities provided by statute. As a result of the foregoing, public children services agencies throughout the State of Ohio will be subject to catastrophic risks of both civil and criminal exposure for duties that never before existed at common law or in statute. Accordingly, this Court must accept jurisdiction over this case, as it is of great public and general interest and to prevent the potential devastating effects to public children services and their employees.

II. STATEMENT OF THE CASE AND FACTS

PCSAO hereby incorporates, in its entirety, the Statement of the Case and Facts as set forth by Appellants Department of Children and Family Services, DCFS Executive Director William Denihan and Case Worker Kamesha Duncan in their Jurisdictional Memorandum.

III. ARGUMENT

A. FIRST PROPOSITION OF LAW

DCFS AND IT EMPLOYEES ARE NOT “IN LOCO PARENTIS” TO ALL CHILDREN THEY INVESTIGATE FOR ALLEGED ABUSE

Ohio’s child endangering laws set forth in R.C. § 2919.22 provides that parents or people in an “*in loco parentis*” relationship with a child owe a child a heightened duty of care to insure that the child is cared for and not harmed. R.C. 2919.22 provides:

(A) No person, who is the parent, guardian custodian, person having custody or control, or person *in loco parentis* of a child under eighteen years of age *** shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

Violation of R.C. 2919.22 is a third degree felony.

The term “*in loco parentis*” has been defined as “the relationship which a person assumes toward a child not his own, holding him out to the world as a member of his family toward whom he owes the discharge of parental duties”; further, “a person standing in loco parentis to a child is one who had put himself in the situation of a lawful parent assuming the obligations incident to the parental relation, without going through the formalities necessary to a legal adoption.” *In re Estate of George* (App. 1959), 82 Ohio Law Abs. 452, 455. The key factors of an *in loco parentis* relationship have be delineated as “the intentional assumption of obligations incidental to the parental relationship, especially support and maintenance.” *Nova Univ., Inc. v. Wagner* (Fla. 1986), 491 So. 2d 1116, 1118, fn. 2. (Emphasis added).

This Court in the leading case of *State of Ohio v. Noggle*, 67 Ohio St. 3d 31, 1993-Ohio-189, 615 N.E. 2d 1040, discussed the phrase “*in loco parentis*” in depth. In *Noggle*, a high

school teacher engaged in a sexual relationship with a high school student. The prosecutor attempted to indict the teacher for violation of R.C. 2907.03(A)(5), Ohio's sexual battery statute. R.C. 2907.03 (A)(5) provides, in essence that a person in an "*in loco parentis*" relationship with another shall not engage in sexual conduct with that person. The prosecution attempted to argue that an "*in loco parentis*" relationship existed between the high school teacher/coach and the student.

This Court **rejected** the argument that "teachers, coaches, scout leaders" etc. have an *in loco parentis* relationship with a child. This Court further held that the term "applies to the people the child goes home to." *Id.* at p 33.

Three years later in *Evans v. Ohio State University* (1996), 112 Ohio App. 3d 724, 680 N.E. 2d 161, motion to certify record overruled (1996), 77 Ohio St. 3d 1494, a plaintiff attempted to argue that a 4-H Club had an "*in loco parentis*" relationship with a 4-H club student member requiring the 4-H Club to have protected the student from a sexual attack by an adult that helped at 4-H Club activities. The Court of Appeals **rejected** Plaintiff's argument and held:

Thus, under the case law, the relationship of *in loco parentis* is established when a person assumes the responsibilities incident to parental status, including custody and support of the child; stated otherwise, the rights, duties and responsibilities are the same as those of the lawful parent. Based upon case authority, and a review of the evidence regarding the nature of the 4-H organization, we are unable to accept plaintiffs' contention that 4-H assumes the type of parental rights, duties or responsibilities over its members, including matters of custody, support and maintenance, that the term *in loco parentis* contemplates, and we hold that the Court of Claims did not err in failing to find that defendant stood in the relations of *in loco parentis* with the injured plaintiff.

Id. at 738 (emphasis added). Even the Eighth District Court of Appeals has defined an "*in loco parentis*" as a person "to one who is relied upon for support or applies to the person 'the child

goes home to.”” *City of Cleveland v. Kazmaier*, 8th Dist. No. 84290, 2004-Ohio-6420 at ¶ 12 quoting *State v. Noggle* (1993), 67 Ohio St. 3d 31, 33, 1993-Ohio-189, 615 N.E. 2d 1040.

The Court of Appeals’ decision in this case erroneously concluded that all public children services agencies and their employees are “*in loco parentis*” to every child they investigate, including children they do not have custody or control over. The Court of Appeals’ error is of public and great general interest because of the absurd consequence its decision creates. If a child is harmed while an agency is investigating allegations of abuse, but does not have legal custody or control of the child, the agency and its employees are subject to criminal felony charges for the injuries to the child.

When a house burns, we call the fire department. When a robber sticks a gun in a shopper’s face, we call the police. When a child cries from abuse or physical neglect, we call children services agencies. The firefighter and the police officer take reports of a need to respond to a call of duty and face no liability due to a legal construct that a special relationship developed between the responder and the caller. Likewise, no special duty should exist between a public children services agency or an employee of such an agency and a child over whom no explicit special relationship has been established.

In this case, the Court of Appeals erroneously adopted Appellee’s creative argument that DCFS and its employees were in an “*in loco parentis*” relationship with Sydney Sawyer and thereby violated a duty of care set forth in R.C. § 2919.22. This order was crafted only to circumvent DCFS’ immunity set forth in R.C. 2477 *et seq.*

B. SECOND PROPOSITION OF LAW

The Department of Children and Family Services is Immune From Liability for Failure to Report Known or Suspected Child Abuse to Law Enforcement

1. **Statutory Immunity in Ohio**

Under Ohio law, political subdivisions and their officials are immune from liability for acts or omissions connected with the exercise of governmental or proprietary functions. *Colbert v. Cleveland* (2003), 99 Ohio St.3d 215, 216. Ohio Revised Code 2744 et seq. addresses and outlines those immunities, exceptions to the immunities and defenses to the exceptions which are available to state political subdivisions and their officials. In determining the application of these statutory immunities, exceptions and defenses to any particular set of facts, a three-tier analysis is employed. *Id.*

The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental or proprietary function. *Id.*; see also *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, 28. However, because political subdivision immunity is not absolute, the second tier of analysis requires the court to determine whether any of the five exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability. *Id.* Finally, *if* an exception from R.C. 2744.02(B) imposes liability on the political subdivision, then the third tier of analysis requires the court to determine whether any of the defenses in R.C. 2744.03 apply, thereby providing the political subdivision a defense against liability. *Id.* In addition, R.C. 2744.03(A)(6) provides defenses and exceptions to immunity for individual employees of political subdivisions. The availability of statutory immunity is a *purely legal issue* and as such is properly determined by a court prior to trial. *Nease v. Med. College Hosp.* (1992), 64 Ohio St.3d 396, 400. (Emphasis added.)

2. **R.C. 2744.02(B)(5) Applies Only to Cases Where Civil Liability is Imposed by Another Section of the Revised Code.**

In the case at bar, DCFS is entitled to immunity pursuant to the first tier of the immunity analysis. Specifically, R.C. 2744.01(F) provides that a county is a political subdivision, and R.C. 2744.01(C)(2)(M) provides that the operation of a county human services department is a governmental function. See *Jackson v. Butler County Bd. of County Commrs.* (1991), 76 Ohio App.3d 448; *Sobiski v. Cuyahoga County Dept. of Children and Family Services*, 2004-Ohio-6108. As such, DCFS and its employees are generally immune from liability pursuant to the first tier of the statutory immunity analysis and the Court must proceed to the second tier in the analysis.

The second tier requires the Court to consider whether one of the five exceptions listed in R.C. 2744.02(B)(1)-(5) apply. R.C. 2744.02(B)(5) is the only section arguably applicable and disputed in this case. It provides that a political subdivision may be liable for injury or death or loss to a person “when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.” However, the statute makes clear that “liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision.” R.C. 2744.02(B)(5).³

Here, Appellant argues that the immunity granted to DCFS by the trial court is improper because R.C. 2151.421(A) creates a duty for a public children services agency to report suspicions of child abuse or neglect to local police. R.C. 2151.421(A) imposes criminal liability through R.C. 2151.99. While the former R.C. 2744.02(B)(5) may have accepted this criminal liability as a bar to immunity, the General Assembly expressed its true intent by amending R.C. 2744.02(B)(5) to exclude only immunity where civil liability is imposed.

As such, the General Assembly has overturned the ruling in *Campbell v. Burton* (2001), 92 Ohio St.3d 336, which held that “liability” in R.C. 2744.02(B)(5) may be civil or criminal.

³ For the purposes of this appeal, it is presumed that the present version of R.C. 2744.02(B)(5) applies.

See *Yates v. Mansfield Bd. of Educ.* (2004), 102 Ohio St.3d 205 (Justice Stratton dissenting: “I believe this textual change in R.C. 2744.02(B)(5) reflects the General Assembly’s original intent. And because R.C. 2151.421 does not impose civil liability upon one who fails to report, I believe that the holding in this case has limited applicability.”) Because the General Assembly has made its intent clear by amending R.C. 2744.02(B)(5), this Court should reject Appellant’s request to deny DCFS political subdivision immunity.

Therefore, no exception in R.C. 2744.02(B) applies, and DCFS is immune for any alleged failure to report suspected child abuse to the local police.⁴ Assuming, *arguendo*, that R.C. 2151.421 does create an exception to immunity because it imposes liability on those who fail to report; within the interpretation of R.C. 2744.02(B)(5) as set forth in *Campbell*, it is not applicable to this case. The plain language of the statute makes clear that the statute does not require DCFS or its employees to report suspected child abuse to the local police.

3. Appellants Had No Duty to Report Suspected Child Abuse.

As discussed above, R.C. 2151.421 is the statutory provision in Ohio that creates a duty upon certain individuals to report suspected incidents of child abuse or neglect. The statute provides:

No person described in division (A)(1)(b) of this section who . . . knows or suspects that a child under eighteen . . . has suffered or faces a threat of suffering any physical or mental wound . . . shall fail to immediately report that knowledge or suspicion to the entity or persons specified in this division. . . [T]he person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides. . .

R.C. 2151.421(A)(1)(a) (Emphasis Added). Within section (A)(1)(b), the statute creates a duty for an “administrator or employee of a certified child care agency or other public or private

⁴ Because none of the exceptions found in R.C. 2744.02(B) apply to this case, there is no need to discuss the defenses and immunities in the third tier of analysis located in R.C. 2744.03.

children services agency” to report to the public children services agency or a municipal or county peace officer. R.C. 2151.421(A)(1)(b).

In construing a statute, a court’s paramount concern is the legislative intent. *State ex rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 584. In determining legislative intent, the court first looks to the language in the statute and the purpose to be accomplished. *Id.* citing *State v. S.R.* (1992), 63 Ohio St.3d 590, 594-595. If the meaning of a statute is unambiguous and definite, then it must be applied as written and no further interpretation is appropriate. *Id.* citing *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.* (1994), 69 Ohio St.3d 521, 524-525. In other words, if the plain application of a statute is apparent on its face, no further application of the rules of statutory construction is necessary.

However, the Court of Appeals held that genuine issues of material fact existed as to whether Appellants made any telephonic or personal report to the police as required by R.C. 2151.421(C). *O’Toole v. Denihan, et al.* 2006-Ohio-6022, at ¶¶ 14-15. Yet, the statute plainly states that people required to report may report to either children services or the police. There is no requirement within the reporting statute which requires individuals to report to both children services and the police, and, correspondingly, there is no duty required of a children services agency to report to the police as the children services agency is already aware of the suspected abuse. The Court of Appeals interpreted R.C. 2151.421(A) beyond its plain meaning to require employees of DCFS to report child abuse to both children services and the police.

The Court of Appeals analysis is inconsistent with both the legislative intent of R.C. 2151.421 and the plain meaning of the statute. The General Assembly enacted R.C. 2151.421 to provide special protection to children from abuse and neglect. *Campbell v. Burton* (2001), 92 Ohio St.3d 336, 342. To accomplish this goal, the General Assembly provided multiple sources

for people to report; either children services or the police. The plain language of the statute makes clear that reporting to either children services or the police will satisfy the statutory duty to report.

It is undisputed that DCFS was aware of the report of child abuse of Sydney Sawyer. Because DCFS had already obtained the report of abuse, the Appellants were under no additional obligation, pursuant to R.C. 2151.421(A), to report to the police. In addition, no reasonable interpretation of R.C. 2151.421(A) could require employees of a children services agency to report suspected child abuse of which the public children services agency is already aware. For this reason R.C. 2151.421(A) cannot be read to require the employees of a children services agency to report suspected child abuse to local police.

As such, the second tier of analysis for political subdivision immunity does not create an exception to immunity under R.C. 2744.02(B)(5), and Appellants DCFS, Denihan, Munro and Duncan are immune from liability pursuant to R.C. 2744 *et seq.* Moreover, Appellants were under no statutory obligation, pursuant to the terms of R.C. 2151.421(A)(1), to report abuse. Accordingly, the Court of Appeals decision is in error.

C. THIRD PROPOSITION OF LAW

There is No Liability for Failure to Investigate Reports of Child Abuse

1. Appellant DCFS is Immune From Liability.

As previously discussed, this Court in *Cater, supra* recognized the three-tiered analysis, as set forth in R.C. Chapter 2744, for determining whether a political subdivision is entitled to statutory immunity.

In this case, there is no dispute that Appellants are entitled to immunity, pursuant to R.C. 2744.02(A)(1), the first-tier of the analysis. Thus, analysis of R.C. 2744.02(B)(1)-(5), the

second-tier of the immunity analysis, is required. After review of the provisions of R.C. 2744.02(B)(1)-(5), only R.C. 2744.02(B)(5) is called into question. Specifically, the issue before the Court of Appeals was whether any statute imposes liability upon DFCS for failure to *investigate* the suspected child abuse and, if such statutory liability exists in another provision of the Revised Code, then DFCS is not entitled to immunity. R.C. 2744.02(B)(5). However, this question has already been resolved by this Court in *Marshall v. Montgomery County Children Services Board* (2001), 92 Ohio St.3d 348.

In *Marshall*, this Court held that R.C. 2151.99 does not impose liability for failure to investigate within the statutory immunity analysis. *Id.* at syllabus. Since Appellee's claim fails to establish liability under the stated exceptions to immunity, as set forth in the second-tier of the analysis, there is no need to analyze the defenses or immunities to the exceptions set forth in R.C. 2744.03 – the third-tier of the analysis. Accordingly, Appellants are entitled to immunity pursuant to R.C. 2744.02(A)(1), as none of the exceptions set for in R.C. 2744.02(B)(1)-(5) apply to this case.

The Court of Appeals attempted to distinguish *Marshall* from the case at bar by determining that this Court in *Marshall* was not presented with an allegation of *reckless* failure to investigate. *Id.* at ¶ 23. However, this Court in *Marshall* quite clearly and unequivocally expressed that “*even if it failed to investigate a report*, appellee is still insulated from liability by sovereign immunity.” *Marshall, supra*, at 92 Ohio St.3d at 353. (Emphasis added.) As addressed above, the only issue is whether or not R.C. 2151.421 specifically imposes liability, within the meaning of R.C. 2744.02(B)(5), for failure to *investigate* suspected child abuse. Whether or not the allegations are framed in terms of recklessness, the provisions of R.C. 2744.02(B)(1)-(5) provide the only exceptions to immunity. Nowhere in the provisions of R.C.

2744.02(B)(1)-(5) is there an exception to immunity for acts that are reckless. Accordingly, no exception to immunity exists for a failure to investigate suspected child abuse.⁵

2. Appellants Denihan Duncan and Munro Are Entitled to Immunity.

The Court of Appeals held, without much discussion, that recklessness was an exception to statutory immunity and apparently relied upon the provisions of R.C. 2744.03(A)(6)(b). However, as established above, reckless actions are not an exception to immunity expressed in R.C. 2744.02(B)(1)-(5). R.C. 2744.03(A)(6)(b), the third-tier of the immunity analysis, provides an exception to *employee* immunity for reckless acts. Further, R.C. 2744.03(A)(6)(b) does not apply to the case at bar, as no exception to immunity was established under R.C. 2744.02(B)(5) -- the preceding tier of the analysis. It is noteworthy, that the Court of Appeals proceeded to consider both R.C. 2744.02(B)(5) and 2744.03(A)(6) together. *O'Toole v. Denihan, et al.* 2006-Ohio-6022, at ¶ 23. This alone reflects the Court of Appeals' misapplication of the R.C. Chapter 2744 analysis.

It is instructive to review this Court's decision in *Cater* with regard to the immunity analysis:

The immunity afforded a political subdivision in R.C. 2744.02(A)(1) is not absolute, but is, by its express terms, subject to the five exceptions to immunity listed in former R.C. 2744.02(B). *Hill v. Urbana* (1997), 79 Ohio St.3d 130, 679 N.E.2d 1109. Thus, once immunity is established under R.C. 2744.02(A)(1), the second tier of analysis is whether any of the five exceptions to immunity in subsection (B) apply. Former R.C. 2744.02(B)(1) thru (5). Finally, under the third tier of analysis, **immunity can be reinstated if** the political subdivision can successfully argue that one of the defenses contained in R.C. 2744.03 applies.

Cater, supra, 83 Ohio St.3d at 28 (Emphasis added.).

⁵ Indeed, it is also curious that the Court of Appeals further attempted to distinguish these cases based upon the fact that *Marshall*, where immunity was granted, had a far more egregious fact pattern to the facts of the case at bar and yet finds no immunity in the case at bar. *O'Toole v. Denihan, et al.* 2006-Ohio-6022, at ¶ 21.

It is clear from this Court's decision that the third-tier of the immunity analysis, consideration of the defenses and immunities set forth in R.C. 2744.03, is *only* applied *if* one of the exceptions to immunity, set forth in R.C. 2744.02(B)(1)-(5), is established.

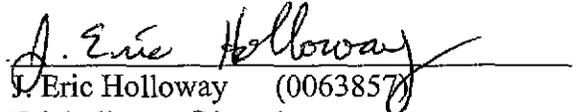
Furthermore, as set forth above, DFCS is entitled to immunity for reckless failure to investigate as no such exception to immunity exists in R.C. 2744.02(B)(1)-(5). As such, it is manifestly unjust for an agency to be immune for acts which its employees could be held liable. Most certainly, this would be an enormous disincentive for individuals to join public service where an agency could be entitled to immunity and summary judgment, while the employees would be left to defend themselves. This illogical and impractical conclusion on further supports the fact that R.C. 2744.03 was never intended to independently provide exceptions to R.C. 2744.02(A) immunity.

For the foregoing reasons, the Court of Appeals failed to properly apply the R.C. Chapter 2744 immunity analysis and Defendants Denihan and Munro must be found immune from liability for alleged reckless failure to investigate as no such exception to immunity exists pursuant to R.C. 2744.02(B)(1)-(5).

III. CONCLUSION

This decision in this case, *sub judice*, imposes duties upon public children services agencies and its employees that do not exist at common law or in statute. As a result, public children service agencies and their employees, throughout the State of Ohio, are exposed to civil and criminal penalties never expressed or contemplated. Accordingly, public children service agencies are placed in jeopardy which could impair the valuable services that they provide. This Court must review the duties and liabilities that are in direct conflict with the Ohio Revised Code to ensure the future operation of public children services agencies in Ohio.

Respectfully submitted,


Eric Holloway (0063857)
EricHolloway@isaacbrant.com
ISAAC, BRANT, LEDMAN AND TEETOR LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215-3742
(614) 221-2121 (phone)
(614) 365-9516 (fax)
*Counsel for Amicus Curiae Public Children
Services Association of Ohio*

CERTIFICATE OF SERVICE

A copy of the foregoing document was sent by regular U.S. mail this 11th day of January, 2007 to:

John W. Martin
John W. Martin Co., L.P.A.
800 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113

Counsel for Plaintiff-Appellant

William D. Beyer
Joan E. Pettinelli
Wuliger, Fadel & Beyer
1340 Sumner Court
Cleveland, Ohio 44115

JAMES COCHRAN
Justice Center
Cuyahoga County Prosecutor's Office
1200 Ontario Street
Cleveland, Ohio 44113

*Counsel for Defendant-Appellee Tallis
George- Munro*

David Ross (0005203)
Michelle J. Sheehan Esq. (0062548)
REMINGER & REMINGER CO., L.P.A.
1400 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115-1093
*Counsel for Defendants-Appellees, DCFS,
William Denihan, Kamesha Duncan*

*Counsel for Defendants-Appellants, DCFS,
William Denihan, Kamesha Duncan*


J. Eric Holloway