

and

MARY JO SHANNON SLICK (0022553)

Stark County Educational Service Center

2100 38th Street, N.W.

Canton, Ohio 44709-2300

Telephone No.: (330) 492-8136

Facsimile: (330) 492-6381

Attorneys for Defendant-Appellee

Marlington Local School District

Board of Education

I. INTRODUCTION

Appellants' Memorandum in Support of Reconsideration, which does little more than reiterate their arguments from their Motion in Support of Jurisdiction, offers nothing to compel the Court to reverse its earlier determination. The "striking similarities" between this case and *Jane Doe v. Jackson Local School District, et al.*, Supreme Court Case No. 2007-1459, that Appellants allege do not demonstrate a widespread problem and provide no basis for further analysis of the meaning of "operation of a motor vehicle."

Neither does *Jane Doe v. Massillon City School District*, Supreme Court Case No. 2007-1311, mandate a further analysis of that same term. In the Massillon case, this Court will review a different section of Ohio's Political Subdivision Tort Liability Act.

II. ARGUMENT

Notwithstanding that Appellants' reargue, inappropriately, their motion to accept jurisdiction, the arguments are not any more persuasive now than they were the first time written. That newspaper articles, one from outside the state of Ohio, conclude that school districts employ bus drivers with histories of drunken driving or drug abuse has absolutely no bearing on how to define the operation of a motor vehicle; neither does the quote from a Columbus Dispatch article indicating that school district officials claim they did not know of the drivers' "checkered pasts." Appellants do not allege here that a bus driver had a past, checkered or otherwise, about which Appellee knew and did nothing.

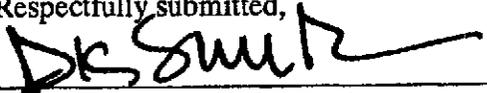
This Court's decision to review whether a board of education can be held liable for a negligent act that results in injury off school grounds pursuant to Ohio Revised Code § 2744.02(B)(4) has no bearing on the definition of the phrase "operation of a motor vehicle" in R.C. § 2744.02(B)(1). The argument that this Court's determination to address one issue in Chapter 2744 compels it to address another Chapter 2744 issue is totally unpersuasive.

Further, Appellants' arguments about legislative intent and other appellate districts applying different definitions of "operate" have already been made and runs counter to Supreme Court Rule XI, Section 2, (A). More importantly, these arguments are not persuasive. Neither is the argument that the legislature could have defined the term "operate" to include pupil supervision. In fact, were the legislature inclined to include supervision within the definition of "operate" it would have explicitly done so. The operation of a motor vehicle, as commonly defined, does not include supervision of passengers. Although there are public policy reasons for not including supervision within the definition of "operate" as it relates to a school bus, the exposition of that policy is not appropriate here.

III. CONCLUSION

This Court's determination to decline jurisdiction was proper and should not be altered.

Respectfully submitted,



David Kane Smith (0016208)
Sherrie C. Massey (0067471)
BRITTON, SMITH, PETERS
& KALAIL CO., L.P.A.
3 Summit Park Drive, Suite 400
Cleveland, Ohio 44131
Telephone: (216) 503-5055
Facsimile: (216) 503-5065
Email: dsmith@ohioedlaw.com
smassey@ohioedlaw.com

and

Mary Jo Shannon Slick (0022553)
Stark County Educational Service Center
2100 38th Street, N.W.
Canton, Ohio 44709-2300
Telephone: (330) 492-8136
Facsimile: (330) 492-6381
Email: slick@sparcc.org

Attorneys for Marlinton Local School
District Board of Education

CERTIFICATE OF SERVICE

I certify that a copy of this foregoing *Appellee Marlinton Local School District Board of Education's Memorandum in Opposition to Appellants' Motion for Reconsideration* was sent by ordinary U.S. mail, postage prepaid, this 19th day of November, 2007, to the following:

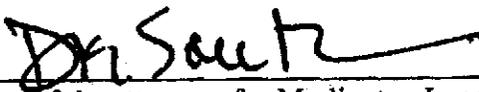
John F. Hill
Joy Malek Oldfield
Hill/Company, LLC
One Cascade Plaza, Suite 2000
Akron, Ohio, 44308

Attorneys for Plaintiffs-Appellants

Dennis P. Mulvihill
Lowe, Eklund, Wakefield & Mulvihill Co., L.P.A.
Tower City Center, 610 Skylight Office Tower
1660 West Second Street
Cleveland, OH 44113-1454

Benson A. Wolman, CEO & General Counsel
Equal Justice Foundation
99 East Broad Street, Suite 1590
Columbus, OH 43215-3506

*Attorneys for Amici Curiae Equal Justice Foundation, Ohio Coalition for the Education of
Children with Disabilities and Children's Defense Fund*


One of the attorneys for Marlinton Local
School District Board of Education