

IN THE SUPREME COURT OF OHIO

GEORGE SULLIVAN : CASE NO: 2008-0691
Appellee : CASE NO: 2008-0817
v. : Certified Conflict and On Appeal
ANDERSON TOWNSHIP, et al : from the Hamilton County Court
of Appeals, First Appellate
Appellant : District, Judgment filed
March 28, 2008, Case #CA070253

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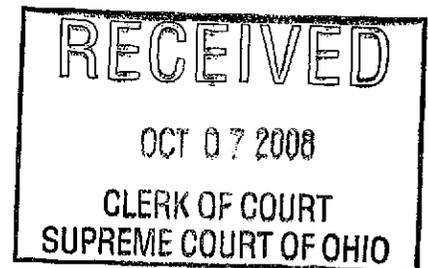
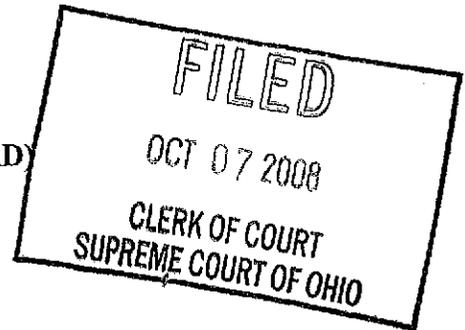


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ARGUMENT

Not all final orders are final and appealable orders.

The General Assembly drafted O.R.C. 2744.02(C) wherein it stated:

- (C) “An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.”

STATEMENT OF FACTS

Not all final orders are appealable orders. As this Court determined in Noble v. Colwell, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989):

“An order which adjudicates one or more but fewer than all the claims or the rights and liabilities of fewer than all the parties must meet the requirements of R.C. 2505.02 and Civ. Rule 54(B) in order to be final and appealable. (*Id.* @ 92).

Appellant’s attempt to apply Hubbell v. City of Xenix, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878 as applicable in the instant case is misguided.

Hubbell can apply but not as Appellants represent. In Hubbell there was only one defendant and only one plaintiff. When all claims and controversies are resolved by an order of the Court it is a final order and 54(B) language is unnecessary. It is the unique situation wherein additional parties to the litigation are still waiting for some finality of their claims, counterclaims, cross-claims, or affirmative defenses that 54(B) is operative.

Appellants take quite a large assumption that 54(B) language does not apply when dealing with immunity issues arising from O.R.C. 2744.02. 54(B) applies to all litigation without question. It is a general rule to be applied to all cases. Somewhat less clear is

how Appellants wish to use a specific Code Subsection (2744.02(C)) to show an exception to the Rule. As if two pair now beat three of a kind, some rules are axiomatic and do not change.

Although it is generally accepted that a specific rule is to be given preference, it must be conceded that the specific Rule R.C. 2744.02(C) does not give clear enough direction to disregard 54(B).

This Court, again, in *Lantsberry v. Tilley Lamp Co.* (1971), 27 Ohio St.2d 303, 306; 56 O.O.2d 179 (180); 272 N.E.2d 127, 129.

“The entire concept of ‘final orders’ is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one disposing of the whole case or some distinct branch thereof.” *Lantsberry v. Tilley Lamp Co.* (1971), 27 Ohio St.2d 303, 306, 56 O.O. 2d 179 (180), 272 N.E.2d 127, 129.

One thing is clear about this appeal, O.R.C. 2744.02(C) does not state “final and appealable.” The Legislature simply wrote “final order” without clarifying the nature of or civil procedure ramification that its citizens would have to deal with.

Appellant’s counsel’s argument with respect to the Fourth District Court of Appeals’ Decision in *Drew v. Lafferty* (1999), 4th Dist. No. 98CA522, 1999 WL 366532, is also misguided. The Court clearly dismissed the Village’s appeal for lack of a final appealable order.

“We dismiss the appeal regarding the Village’s immunity from Lafferty’s claims brought against Chief Drew in his capacity as a representative of the Village for lack of a final appealable order on the matter.” *Drew* @#6.

In closing, this Court determined in *Hubbell* that:

“Early resolution of the issue of whether a political subdivision is immune from liability pursuant to R.C. Chapter 2744 is beneficial to both parties . . . under the scenario. Both the Plaintiff and the political subdivision may save the time, effort, and expense of a trial and appeal, which could take years.

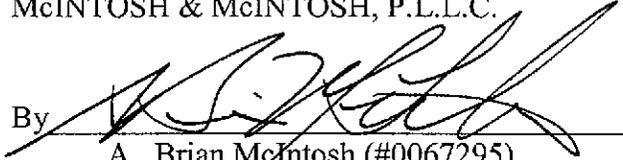
CONCLUSION

The Trial Court’s Decision granted immunity to Anderson Township on some issues and denied on others. The Court’s retention of these remaining claims clearly shows its intention to retain jurisdiction. It was, at this point, the time to resolve this matter short of the “time, effort and expense of trial and appeal”.

Respectfully submitted,

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CERTIFICATION OF SERVICE

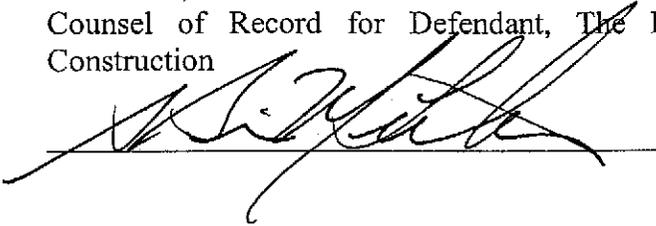
I hereby certify that a copy of the foregoing has been served upon the following parties and/or counsel of record, by ordinary U.S. Mail this 6th day of October, 2008, postage prepaid.

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A handwritten signature in black ink, appearing to read 'K. B. Flacks', is written over a horizontal line. The signature is stylized and cursive.