

ORIGINAL

No. 2009-2106

IN THE SUPREME COURT OF OHIO

**On Appeal from the Court of Appeals
First Appellate District
Hamilton County, Ohio
Case No. C0900708**

**LEOLA SUMMERVILLE, ADMINSTRATOR
OF THE ESTATE OF ROOSEVELT
SUMMERVILLE, DECEASED, and
LEOLA SUMMERVILLE
*Plaintiff, Appellee***

vs.

**CITY OF FOREST PARK, ADAM PAPE,
and COREY HALL
*Defendants-Appellants***

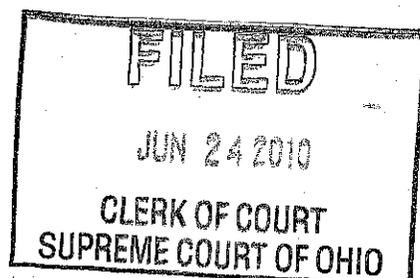
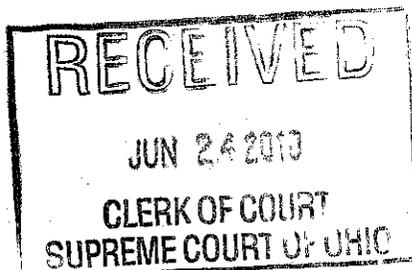
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INTRODUCTION

It is well settled in Ohio that a trial court's order must be final before it can be reviewed at the appellate level. See Section 3(B)(2), Article IV, Ohio Constitution; *State Auto. Mut. Ins. Co. v. Titanium Metals Corp., et al.*, 108 Ohio St.3d 540, 2006-Ohio-1713, 844 N.E.2d 1199 at ¶8. "Generally, the denial of summary judgment is not a final, appealable order." *Hubbell v. City of Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878 at ¶9.

Appellants have attempted to circumvent this rule by arguing that the Political Subdivision Tort Liability Act grants state employees the right to immediately appeal a trial court's denial of qualified immunity in cases arising under 42 U.S.C. § 1983. However, in drafting Chapter 2744, the Ohio General Assembly expressed an unequivocal intent to remove certain types of civil actions and claims from the purview of the Act, including "claims based upon alleged violations of the constitution or statutes of the United States." R.C. 2744.09(E). Accordingly, Ohio appellate courts have correctly and consistently held that political subdivisions and their employees are not entitled to the rights and immunities available under Chapter 2744 with regard to federal causes of action under 42 U.S.C. § 1983 and similar statutes.

Despite the unambiguous language of R.C. § 2744.09 and the uniformity of its application by Ohio's judicial districts, Defendants assert in their proposition of law that this Chapter *should* apply to transform an otherwise non-appealable decision denying qualified immunity to a political subdivision and/or its employee into a final appealable order. This proposition, as well Defendants' contention that this Court can and should adopt the federal collateral order and pendant appellate jurisdiction doctrines, is little more than a request for the Court to provide a judicially created exception to

Ohio's laws governing interlocutory appeals. Accordingly, Appellants' proposition of law should be denied and the matter should be remanded to the trial court for disposition on the merits.

STATEMENT OF THE CASE AND FACTS

On September 15, 2005, Mrs. Summerville arrived home from work to find blood in the hallway of the suburban home she shared with her husband of 35 years, Roosevelt Summerville. After discovering that her non-responsive husband was barricaded in the couple's bedroom, Mrs. Summerville called 9-1-1 and the Forest Park Police Department dispatched Officers Adam Pape and Corey Hall to the Summerville's home. The officers found Mr. Summerville lying on the bedroom floor stabbing himself in the chest with a Leatherman tool. Although many of the details regarding the subsequent events are in dispute, one fact is definite: mere minutes after arriving at the scene the officers shot and killed the elderly Mr. Summerville, who was armed only with the Leatherman tool and was already suffering from a number of significant self-inflicted injuries.

Mrs. Summerville, on behalf of herself and her husband's estate, filed suit against the individual officers and the City of Forest Park in the Hamilton County Court of Common Pleas on September 6, 2007. In her complaint, Mrs. Summerville alleged federal claims under 42 U.S.C. § 1983 for excessive use of force and failure to train as well as several state law causes of action. On March 31, 2009, Defendants filed a motion for summary judgment requesting that the court dismiss all of Mrs. Summerville's claims. The matter was fully briefed and argued in the trial court. On September 28, 2009, the trial court entered an order of judgment: (1) denying the officers summary judgment with regard to Plaintiff's claim of excessive force under § 1983; (2) denying the

City of Forest Park summary judgment with regard to Plaintiff's claim of failure to train under § 1983; and (3) granting summary judgment on the remaining claims.

On October 6, 2009, Defendants filed a Notice of Appeal in the First District Court of Appeals "pursuant to the authority of ORC 2744.02(C) and because the Court denied Adam Pape and Corey Hall qualified immunity." Defendants also requested that the court take jurisdiction over the City of Forest Park's related appeal. Plaintiff responded by filing a Motion to Dismiss premised upon the fact that the trial court's ruling was not a final, appealable order under Ohio law. On October 28, 2009, the appellate court granted Plaintiff's Motion to Dismiss.

ARGUMENT IN OPPOSITION

Proposition of Law: A trial court's decision overruling a motion for summary judgment in which a political subdivision or its employee sought immunity from claims brought pursuant to 42 U.S.C. § 1983 is an order denying "the benefit of an alleged immunity" and is, therefore, a final and appealable order under R.C. 2744.02(C).

I. Chapter 2744 does not apply to civil claims arising out of the constitution or laws of the United States.

Appellants contend that the "plain meaning" of R.C. § 2744.02(C) grants Officers Pape and Hall the right to immediately appeal the trial court's order denying them the benefit of qualified immunity from liability for Appellee's claims arising under 42 U.S.C. § 1983.¹ This contention must be rejected, however, as it is premised upon an incomplete reading of the statutory scheme and wholly ignores the clear intent of the legislature to exclude federal causes of action from the purview of Chapter 2744.

¹ R.C. § 2744.02(C) states that "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."

R.C. § 2744.09 expressly states that: “This **chapter** does not apply to, and shall not be construed to apply to...civil claims based upon alleged violations of the constitution or statutes of the United States, except that the provisions of section 2744.07 of the Revised Code shall apply to such claims or related civil actions.” R.C. § 2744.09(E). Based on the unambiguous terms of this language, it is clear that the General Assembly did not intend for any portion of Chapter 2744—save R.C. § 2744.07—to apply to claims arising under federal law. See *State ex rel. Burrows v. Indus. Comm.* (1997), 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (court must first look to the plain language of the statute to determine legislative intent). Accordingly, Appellants’ contention that R.C. 2744.02(C) applies in this case is misplaced and should be rejected as inconsistent with the unequivocal terms of the statutory scheme. See *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶152 (court must apply a statute as it is written when its meaning is plain and unambiguous), *Burrows*, 78 Ohio St.3d at 81 (an unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language).

Even if this Court somehow decides that the language of R.C. § 2744.09(E) does not clearly and unambiguously remove civil actions premised upon federal law from the purview of Chapter 2744, relevant rules of statutory construction also demonstrate that the General Assembly did not intend R.C. § 2744.02(C) to apply to civil actions alleging federal claims. See *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 97, 573 N.E.2d 77 (to ascertain the legislative intent, courts rely upon ordinary rules of statutory construction).

First, under the maxim of *expressio unius est alterius*², a statute which specifies one exception to a general rule will be assumed to exclude all other exceptions. *Thomas v. Freeman* (1997), 79 Ohio St.3d 221, 224-225, 680 N.E.2d 997. In this case, R.C. § 2744.09(E) stands for the general rule that the provisions of Chapter 2744 do not apply to civil claims based upon alleged violations of the constitution or statutes of the United States. However, R.C. 2744.09(E) does list one explicit exception to this general rule, stating that “the provisions of section 2744.07 of the Revised Code shall apply to such claims or related civil actions.”³ Under the doctrine of *expressio unius est alterius*, the inclusion of this exception is conclusive evidence that the legislature did not intend any other provisions of Chapter 2744—including R.C. § 2744.02(C)—to apply in civil actions arising under federal law.

Second, it is well settled in Ohio that to the extent two statutory provisions conflict, “they shall be construed, if possible, so that effect is given to both.” R.C. § 1.51. In their brief, Appellants contend that the final appealable order provision of R.C. 2744.02(C) and R.C. 2744.09(E) can be harmonized because the latter section only operates to render the provisions of Chapter 2744 granting immunities inapplicable to claims arising under federal law. This interpretation is inconsistent with the language actually used by the General Assembly, however, which expressly dictates that the whole of Chapter 2744 “does not apply to, and shall not be construed to apply to...civil claims based upon alleged violations of the constitution or statutes of the United States.” R.C. § 2744.09(E). Because the statute itself does not draw distinctions between the provisions of Chapter 2744 granting immunity and those that serve other functions,

² “The expression of one thing is the exclusion of the other.”

³ R.C. 2744.07 dictates the circumstances under which a political subdivision must provide for the defense of an employee against whom a legal action is filed.

Appellants attempt to reconcile the two provisions is clearly flawed. See *State v. Singer* (1977), 50 Ohio St. 2d 103, 108, 362 N.E.2d 1216 (legislative intent must be discerned from the language of the statute itself); see also *State, ex. rel. General Elec. Supply Co. v. Jordano Elec. Co.* (1990), 53 Ohio St.3d 66, 71, 558 N.E.2d 1173 (in determining intent, it is the duty of the court to give effect to the words used, not to delete words used or insert words not used).

On the other hand, the two provisions are easily harmonized under Appellee's interpretation of the statutory scheme which recognizes that, while R.C. 2744.02(C) will generally render orders denying an alleged immunity to political subdivisions and/or their employees immediately appealable, that provision does not apply to the class of cases the General Assembly has specifically excluded from the dictates of Chapter 2744 by virtue of the language in R.C. 2744.09. Defendants' contention that such an interpretation would render meaningless the legislature's addition of the words "any other provision of the law" to R.C. 2744.02(C) is also unfounded as federal claims are far from the only potential source of immunity from liability for political subdivisions. See, e.g., R.C. 2305.34 (immunity from tort liability of water supply operators), R.C. 2305.39 (immunity from tort liability for damages caused while responding to oil discharges)..

Finally, the clarity of this statutory scheme is evidenced by the fact that appellate courts across Ohio have uniformly refused to apply Chapter 2744 to federal causes of action under 42 U.S.C. § 1983. See, e.g., *W.P. v. City of Dayton*, 2nd Dist. No. 22549, 2009-Ohio-52 at ¶12 (R.C. 2744.02 provides no immunity from § 1983 liability); *Campbell v. City of Youngstown*, 7th Dist. No. 006 MA 184, 2007-Ohio-7219 at ¶15 ("Ohio's courts have recognized that R.C. Chapter 2744 does not apply to a claim raised under Title 42, U.S. Code, Section 1983"); *Patton v. Wood County Humane Society*

(2003), 154 Ohio App.3d 670, 2003-Ohio-5200, 798 N.E.2d 676 at ¶133 (“Pursuant to R.C. 2744.09(E), the immunities found within R.C. Chapter 2744 do not apply to Section 1983 actions”).

In sum, the plain language of the statute, application of the rules of statutory construction, and previous decisions by lower courts all support one conclusion: R.C. Chapter 2744 does not apply to civil actions arising out of the constitution or statutes of the United States. Accordingly, this Court should reject Appellant’s proposition of law and remand this case to the lower court for further disposition on the merits.

II. This Court cannot adopt the federal collateral order doctrine because a denial of qualified immunity is not a final, appealable order under Ohio law.

Appellants contend that even if R.C. 2744.02(C) does not provide political subdivision employees the right to immediately appeal denials of qualified immunity from liability for claims arising under federal law, this Court should adopt the federal collateral order doctrine to permit such appeals. Although Appellants’ suggestion might appear viable on its face, this Court does not have authority to take such action because the federal definition of final, appealable order is significantly broader than that set forth by the Ohio General Assembly in R.C. § 2505.02. Were the Court to adopt the collateral order doctrine, it would clearly be overstepping its bounds as a judicial body and engaging in a legislative function. See Ohio Const., Art. IV; §3(B)(2), R.C. 2503.36 (setting forth limits on Supreme Court’s rule making power).

Pursuant to federal law, orders which do not terminate the proceedings in the district court are “final and appealable” for purposes of 28 U.S.C. § 1291 if they (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) are effectively unreviewable on appeal

from the final judgment. *Coopers & Lybrand v. Livesay* (1978), 437 U.S. 463, 468, 98 S.Ct. 2454. Based upon this relatively expansive definition of the term final decision, the collateral order doctrine permits defendants in federal court who are denied the benefit of qualified immunity from liability for violations of 42 U.S.C. § 1983 to immediately appeal that judgment.⁴ *Johnson v. Jones* (1995), 515 U.S. 304, 115 S.Ct. 2151. This analysis, however, cannot be seamlessly transferred to civil actions brought in the courts of the State of Ohio.

In *Johnson v. Fankell* (1997), 520 U.S. 911, 117 S.Ct. 1800, the United States Supreme Court was faced with the issue of whether defendants in a state court §1983 action had the right to immediately appeal a denial of qualified immunity at the summary judgment stage. (1997) 520 U.S. 911. In ruling that they did not, the Court determined that: (1) state courts need not adopt the federal definition of “final decision” in construing the meaning of that term under their own appellate rules; and (2) state appellate rules are not pre-empted by §1983 to the extent they do not permit interlocutory appeals. *Id.* at 911-912. Pursuant to this decision, this Court can only adopt the collateral order doctrine if denials of qualified immunity can reasonably be considered final, appealable orders as that term has been defined under Ohio law.

In Ohio, “an order of a court is a final, appealable order only if the requirements of both Civ. R. 54(B) and R.C. 2505.02 are met.”⁵ *Chef Italiano Corp. v. Kent State*

⁴ Interlocutory appeals of summary judgment decisions denying state actors qualified immunity are only permitted to the extent that a purely legal issue is raised. See *Turner v. Scott* (1997), 119 F.3d 425, *Boyd v. Boeppler* (2000), 215 F.3d 594. Plaintiff does not concede that Defendants’ appeal would meet this standard.

⁵ In this case, Defendant-Appellants failed to seek, much less secure, a determination from the trial court of “no just reason to delay” pursuant to Rule 54(B) even though Plaintiff-Appellee has surviving claims against both the individual employees of the township and the township itself.

Univ. (1989), 44 Ohio St.3d 86, 88. R.C. 2505.02(B) sets forth an exhaustive list of circumstances under which an order will be considered “final” such that it can be appealed. See *State v. Muncie* (2001), 91 Ohio St.3d 440, 746 N.E.2d 1092. Of those six circumstances, only one is potentially relevant to a trial court’s order denying political subdivision employees the benefit of qualified immunity from suit under Section 1983: [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment. R.C. 2505.02(B)(1). When considering whether the order “determines an action and prevents a judgment,” the question is whether, in light of the order, an appellant may still obtain a judgment in the matter against an appellee. *Wisintainer v. Eclen Power Strut Com.* (1993), 67 Ohio St.3d 352, 355, 617 N.E.2d 1136.

In *Martynyszyn v. Budd*, 7th Dist. No. 03-MA-250, 2004-Ohio-4824, the Seventh District Court of Appeals addressed whether a summary judgment order denying county law enforcement officials qualified immunity from suit under Section 1983 constituted a final order under R.C. 2505.02(B)(1). In finding that it did not, the Court noted that:

a trial court’s denial of summary judgment for qualified immunity merely postpones the final disposition of both the immunity claim and the merits of the case until trial. Appellants retain all substantial rights. Therefore, denial of summary judgment for qualified immunity is not a final and appealable order and cannot vest this court with jurisdiction to hear appellant’s claims.

Id. at ¶1617. Several other appellate districts have also explicitly determined that R.C. 2505.02 does not permit appeal of a trial court ruling denying defendants the benefit of qualified immunity from liability under §1983. See *Ohio Civ. Serv. Emp. Assn. v. Moritz* (1987 10th Dist.), 39 Ohio App.3d 132, 133, *Shane v. Tracy, et al.*, (August 24, 2000), 8th Dist. No. 77025.

Because a trial court order refusing to grant summary judgment in favor of a political subdivision employee on the basis of qualified immunity from suit under 42 U.S.C. § 1983 is not a “final, appealable order” as that term has been defined by the General Assembly in R.C. § 2505.02, this Court cannot unilaterally adopt the collateral order doctrine which relies upon the significantly broader federal definition of “final decision.” Accordingly, Defendant-Appellants request that it do so must be denied.

III. The doctrine of pendant appellate jurisdiction has no basis in state law and should not be adopted by this Court.

Defendant-Appellants request this Court to further broaden the scope of Ohio appellate court jurisdiction by adopting the “pendant appellate jurisdiction” doctrine. Pursuant to this rule, federal circuit courts may, in a narrow set of circumstances, exercise jurisdiction over an otherwise non-appealable order because it is somehow related to an appealable order. See, e.g., *Mattox v. City of Forest Park*, 183 F.3d 515 (6th Cir. 1999). In this case, Defendant-Appellants urge the Court to use the doctrine to permit immediate appeals of *Monnell* claims against municipal defendants when such claims are closely intertwined to an individual defendant’s denial of qualified immunity.

This Court should deny this request for two reasons. First, as demonstrated above, trial court orders denying political subdivision employees qualified immunity at the summary judgment stage in actions arising under 42 U.S.C. 1983 are not subject to immediate appellate review in Ohio. Accordingly, in such instances there would be no appealable order for the non-appealable order relating to a municipal defendant to attach.

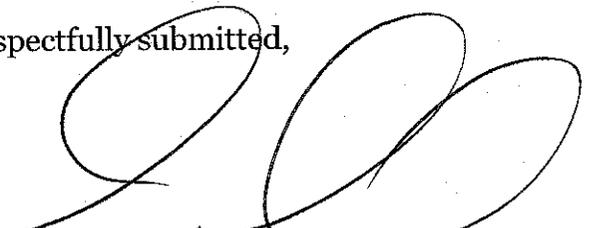
Second, pendent appellate jurisdiction—a federal procedural practice that has no basis in Ohio law—cannot reasonably be used to circumvent the intent of the General

Assembly to define and limit the types of orders which will be considered final and appealable in this state. See R.C. 2505.02. This fact is underscored by Defendant-Appellant's failure to cite to or otherwise explain how the pendent appellate doctrine is consistent with the rules, statutes, or law of this state. Under these circumstances, Defendants' request for this Court to adopt the doctrine of pendant appellate jurisdiction should be denied.

IV. CONCLUSION

For these reasons, Plaintiff-Appellee Leola Summerville respectfully requests that this Court reject Defendant-Appellant's proposition of law and remand this case to the trial court for further disposition on the merits.

Respectfully submitted,



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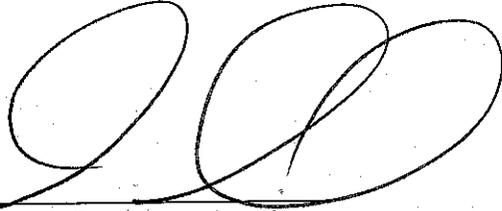
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R.C. § 2305.34

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXIII. Courts--Common Pleas

Chapter 2305. Jurisdiction; Limitation of Actions (Refs & Annos)

Miscellaneous Provisions

→ **2305.34 Immunity of water supply operator in tort action for injury arising from inadequate hydrant pressure**

(A) Neither a nonprofit corporation organized under Chapter 1702. of the Revised Code that owns or operates a water supply or waterworks that regularly serves persons located outside a municipal corporation nor a regional water and sewer district organized under Chapter 6119. of the Revised Code is liable in damages in a civil action for injury, death, or loss to person or property that allegedly arises from the failure of a hydrant controlled by the corporation or district to provide a sufficient quantity of water or sufficient water pressure to adequately suppress a fire of any size, regardless of whether the hydrant was designed for use as a fire hydrant or whether a fire department uses the hydrant with the permission of the corporation or district. All low-pressure hydrants in a municipal corporation or regional water and sewer district shall be designated as such by being painted a conspicuous color distinguishing low-pressure hydrants from high-pressure hydrants in the municipal corporation or regional water and sewer district.

(B) This section does not create, and shall not be construed as creating, a new cause of action against or substantive legal right against a nonprofit corporation described in division (A) of this section or a regional water and sewer district.

(C) This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by any other provisions of the Revised Code, including, without limitation, Chapter 2744. of the Revised Code in the case of a regional water and sewer district, or any immunities from civil liability or defenses available at common law, to which a nonprofit corporation described in division (A) of this section or a regional water and sewer district may be entitled under circumstances not covered by this section.

CREDIT(S)

(1997 S 25, eff. 8-21-97)

Current through 2010 Files 1 to 42 and 53 of the 128th GA (2009-2010), apv. 6/12/10, and filed with the Secretary of State by 6/13/10.

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Title XXIII. Courts--Common Pleas

Chapter 2305. Jurisdiction; Limitation of Actions (Refs & Annos)

Miscellaneous Provisions

→ 2305.39 Civil immunity for persons responding to oil discharges

(A) As used in this section:

- (1) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.
- (2) "Discharge" means an intentional or unintentional emission of oil into or upon the navigable waters located within this state or the adjoining shorelines of such navigable waters, including spilling, leaking, pumping, pouring, emitting, emptying, or dumping. "Discharge" does not include natural seepage.
- (3) "Federal on-scene coordinator" means the federal official designated in the national contingency plan.
- (4) "National contingency plan" means the plan prepared and published under the "Federal Water Pollution Control Act," 33 U.S.C.A. 1321(d), as amended by the "Oil Pollution Act of 1990," Pub. L. No. 101-380, 104 Stat. 484.
- (5) "Oil" means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. "Oil" does not include petroleum, including crude oil or any fraction thereof that is specifically a hazardous substance identified or listed in rules adopted under division (B)(1)(c) of section 3750.02 of the Revised Code.
- (6) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes governmental entities.
- (7) "Removal costs" means the costs of containing and removing oil that are incurred after a discharge of oil has occurred or, when there is a substantial threat of a discharge of oil, the costs of preventing, minimizing, or mitigating oil pollution arising from the incident, including the costs of taking other actions as may be necessary to minimize or mitigate damage to the public health or welfare, and damage to fish, shellfish, wildlife, and public and private property, including shorelines and beaches.
- (8) "Responsible party" has the same meaning as in the "Oil Pollution Act of 1990," Pub. L. No. 101-380, 104

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Stat. 486,33 U.S.C.A. 2701.

(9) "Navigable waters" has the same meaning as in the "Federal Water Pollution Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251, as amended.

(B) Notwithstanding any other provision of law, a person, other than a responsible party, is not liable for removal costs or damages that result from an act or omission in the course of rendering care, assistance, or advice consistent with the national contingency plan, or as otherwise directed by the federal on-scene coordinator or by a state official with responsibility for responding to a discharge. Division (B) of this section does not apply to acts or omissions of the person constituting gross negligence or reckless or willful misconduct.

(C)(1) This section does not limit or affect the liability of a responsible party. A responsible party is liable for removal costs or damages resulting from the act or omission of a person who is relieved of liability under division (B) of this section.

(2) This section does not limit or affect the liability of any person for personal injury or wrongful death.

(3) This section does not create a new cause of action or substantive legal right against any person resulting from an act or omission in the course of responding to a discharge.

CREDIT(S)

(1995 H 37, eff. 8-23-95)

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 Title XXV. Courts—Appellate
 ◻ Chapter 2505. Procedure on Appeal (Refs & Annos)
 ◻ Final Order
 → 2505.02 Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 516, eff. 12-30-04; 2004 S 80, eff. 4-7-05; 2004 S 187, eff. 9-13-04; 2004 H 292, eff. 9-2-04; 2004 H 342, eff. 9-1-04; 1998 H 394, eff. 7-22-98; 1986 H 412, eff. 3-17-87; 1953 H 1; GC 12223-2)

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Title XXVII. Courts--General Provisions--Special Remedies

Chapter 2744. Political Subdivision Tort Liability (Refs & Amos)

→ 2744.07 Political subdivision providing for defense of employee; hearing regarding duty to defend

(A)(1) Except as otherwise provided in this division, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding which contains an allegation for damages for injury, death, or loss to person or property caused by an act or omission of the employee in connection with a governmental or proprietary function. The political subdivision has the duty to defend the employee if the act or omission occurred while the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or from proceeds of insurance. The duty to provide for the defense of an employee specified in this division does not apply in a civil action or proceeding that is commenced by or on behalf of a political subdivision.

(2) Except as otherwise provided in this division, a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee in a state or federal court or as a result of a law of a foreign jurisdiction and that is for damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of employment or official responsibilities.

(B)(1) A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function.

(2) No action or appeal of any kind shall be brought by any person, including any employee or a taxpayer, with respect to the decision of a political subdivision pursuant to division (B)(1) of this section whether to enter into a consent judgment or settlement or to secure releases, or concerning the amount and circumstances of a consent judgment or settlement. Amounts expended for any settlement shall be from funds appropriated for this purpose.

(C) If a political subdivision refuses to provide an employee with a defense in a civil action or proceeding as described in division (A)(1) of this section, upon the motion of the political subdivision, the court shall conduct a hearing regarding the political subdivision's duty to defend the employee in that civil action. The political subdivision shall file the motion within thirty days of the close of discovery in the action. After the motion is filed, the employee shall have not less than thirty days to respond to the motion.

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At the request of the political subdivision or the employee, the court shall order the motion to be heard at an oral hearing. At the hearing on the motion, the court shall consider all evidence and arguments submitted by the parties. In determining whether a political subdivision has a duty to defend the employee in the action, the court shall determine whether the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities. The pleadings shall not be determinative of whether the employee acted in good faith or was manifestly outside the scope of employment or official responsibilities.

If the court determines that the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities, the court shall order the political subdivision to defend the employee in the action.

CREDIT(S)

(2002 S 106, eff. 4-9-03; 1985 H 176, eff. 11-20-85)

CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article 1, § 5, and the right to a remedy, under Ohio Constitution Article 1, § 16. The ruling was by the U.S. District Court for the Southern District of Ohio, deciding as it believes the Supreme Court of Ohio would have, in the case of *Kammeyer v City of Sharonville*, 311 F.Supp.2d 653 (SD Ohio 2003). The Court also observed that the state is sovereign but political subdivisions are not.

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**Effective:[See Text Amendments]**

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
▣ Part IV. Jurisdiction and Venue (Refs & Annos)
▣ Chapter 83. Courts of Appeals (Refs & Annos)
→ § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Apr. 2, 1982, Pub.L. 97-164, Title I, § 124, 96 Stat. 36.)

Current through P.L. 111-191 (excluding P.L. 111-148, 111-152, 111-159, and 111-173) approved 6-15-10

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Effective: October 19, 1996

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
 ☐ Chapter 21. Civil Rights (Refs & Annos)
 ☐ Subchapter I. Generally
 → § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Current through P.L. 111-191 (excluding P.L. 111-148, 111-152, 111-159, and 111-173) approved 6-15-10

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Title XXV. Courts--Appellate

Chapter 2503. Supreme Court (Refs & Annos)

Practice and Procedure

→ 2503.36 Court may prescribe rules of practice

The supreme court may prescribe rules for the regulation of its practice, the reservation of questions, the transmission of cases to it from the lower courts, and the remanding of cases.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 1473)

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