

IN THE SUPREME COURT OF OHIO

DARRELL SAMPSON,

Plaintiff-Appellee,

v.

CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY, ANTHONY  
JACKSON, GEORGE PHILLIPS, AND  
RONALD MORENZ

Defendants-Appellants.

CASE NO. 2010-1561

On Appeal from the Cuyahoga County  
Court of Appeals, Eighth Appellate  
District, Case No. 09-093441

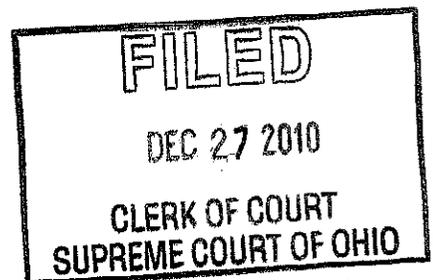
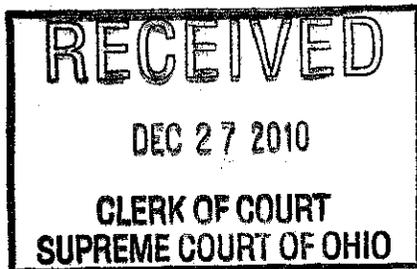
APPELLANTS' MOTION FOR RECONSIDERATION OF COURT'S REFUSAL  
TO GRANT JURISDICTION TO HEAR PROPOSITION OF LAW NO. II

Nancy C. Schuster, Esq.  
SCHUSTER & SIMMONS  
2913 Clinton Avenue  
Cleveland, Ohio 44113  
Telephone: (216) 348-1100  
Facsimile: (216) 348-0013  
[ss@apk.net](mailto:ss@apk.net)

*Attorneys for Plaintiff-Appellee  
Darrell Sampson*

Aretta K. Bernard (039116)  
Stephen W. Funk (0058506)  
*\*Counsel of Record*  
Karen D. Adinolfi (0073693)  
ROETZEL & ANDRESS, LPA  
222 South Main Street  
Akron, OH 44308  
Telephone: (330) 376-2700  
Facsimile: (330).376.4577  
[abernard@ralaw.com](mailto:abernard@ralaw.com); [sfunk@ralaw.com](mailto:sfunk@ralaw.com)  
[kadinolfi@ralaw.com](mailto:kadinolfi@ralaw.com)

*Attorneys for Defendants-Appellants  
Cuyahoga Metropolitan Housing Authority,  
Anthony Jackson, George Phillips and  
Ronald Morenz*



**MOTION FOR RECONSIDERATION**

Pursuant to S.Ct. Prac. R. 11.2(B)(1), Appellants Cuyahoga Metropolitan Housing Authority, George Phillips, Anthony Jackson, and Ronald Morenz hereby move for reconsideration of the portion of the Court's decision, dated December 15, 2010, relating to the refusal to grant jurisdiction over Appellants' Proposition of Law No. II. The grounds for this Motion are set forth in the attached Memorandum.

Respectfully submitted,



Aretta K. Bernard (039116)

Stephen W. Funk (0058506)

*\*Counsel of Record*

Karen D. Adinolfi (0073693)

ROETZEL & ANDRESS, LPA

222 South Main Street

Akron, OH 44308

Telephone: (330) 376-2700

Facsimile: (330).376.4577

[abernard@ralaw.com](mailto:abernard@ralaw.com); [sfunk@ralaw.com](mailto:sfunk@ralaw.com)

[kadinolfi@ralaw.com](mailto:kadinolfi@ralaw.com)

*Attorneys for Defendants-Appellants  
Cuyahoga Metropolitan Housing Authority,  
Anthony Jackson, George Phillips and  
Ronald Morenz*

## MEMORANDUM

This discretionary appeal presented two propositions of law relating to whether the Cuyahoga Metropolitan Housing Authority (“CMHA”), its Executive Director, George Phillips, its Chief of Police, Anthony Jackson, and a CMHA police detective, Lt. Ronald Morenz (the “Individual Defendants”), are entitled to immunity from alleged common law tort claims under R.C. Chapter 2744. The first proposition of law relates to whether CMHA is entitled to immunity under R.C. 2744.09(B), and the second proposition of law relates to whether the Individual Defendants are entitled to immunity under R.C. 2744.03(B)(6). Both propositions of law are related to each other because they both arise from the same claims and the same factual allegations that have been alleged by Plaintiff Darrell Sampson (“Sampson”), jointly and severally, against CMHA and the Individual Defendants. In presenting both propositions of law to this Court, therefore, Appellants have requested that the Court review Sampson’s alleged claims and determine whether CMHA, the Individual Defendants, or both, are entitled to immunity under Ohio law. (*See* Appellants’ Memorandum in Support of Jurisdiction, filed 9/6/2010).

In a decision, dated December 15, 2010, this Court correctly agreed to accept jurisdiction over Proposition of Law No. I in order to determine whether CMHA is entitled to immunity from Sampson’s alleged claims under Ohio law. (*See* Decision of December 15, 2010). In so doing, however, the Court declined to accept jurisdiction over Proposition of Law No. II, which means that the rights and defenses of the Individual Defendants will be left out of the discussion about whether CMHA should be granted immunity under R.C. 2744.09(B). The fact remains, however, that the Court’s resolution of CMHA’s immunity defense will undoubtedly have an impact, either directly or indirectly, upon how the claims alleged against the Individual

Defendants will ultimately be resolved. Yet, the Court will be issuing its decision *without* the benefit of reviewing and analyzing Sampson's claims from the perspective of the Individual Defendants who will not be able to present any arguments about why they also should be granted immunity under R.C. 2744.03(B)(6).

For this reason, therefore, Appellants respectfully request that the Court reconsider the portion of the December 15<sup>th</sup> decision that declined to hear Proposition of Law No. II and accept jurisdiction over both propositions of law in order to provide a more complete and comprehensive decision in this case. Although Proposition of Law No. I presents a different legal issue than Proposition of Law No. II, the Court's resolution of Proposition of Law No. I will certainly affect the Individual Defendants. Proposition of Law No. I will require the Court to determine whether Sampson's claims against CMHA arise out of the "employment relationship" under R.C. 2744.09(B), and whether, and to what extent, CMHA can be held liable, as a political subdivision, for the alleged intentional torts, which, by definition, fall outside the scope of employment under Ohio law. (*See* Appellants' Jurisdictional Memorandum, pp. 8-11, filed 9/6/2010). In deciding Proposition of Law No. I, therefore, both the Court (and the parties) may be making statements about the nature of the alleged claims (and about the nature of evidence in the record) that may directly impact (or may even inadvertently impact) the rights and defenses of the Individual Defendants and whether they can or should be held *personally* liable for Sampson's claims under R.C. 2744.03(B)(6). The Court will not have the benefit, however, of reviewing and analyzing the merits of the Individual Defendants' immunity defenses in writing its opinion and deciding the issues presented. Accordingly, given that the Court has already accepted jurisdiction over Proposition of Law No. I, it also should accept jurisdiction

over Proposition of Law No. II in order to ensure that the claims alleged against *all* of the Defendants are consistently resolved in a fair, just, and comprehensive manner.

In this regard, it is important to re-emphasize that the claims alleged against CMHA are the *same* claims that have been alleged against the Individual Defendants. As set forth in Appellants' Jurisdictional Memorandum, the complaint arises from the criminal investigation and arrest of 13 CMHA employees for the criminal charges of theft in office and misuse of credit cards in July/August of 2004. In his complaint, however, Sampson does not differentiate between the liability of the four defendants, but alleges that they all are "jointly and severally liable" for his alleged claims. Indeed, when asked to explain why he sued both CMHA and the Individual Defendants, Sampson testified: "Because it's under the same umbrella. All of them is CMHA. All of them work for Cuyahoga County Metropolitan Housing Authority." (Deposition of Darrell Sampson, pg. 34, lines 20-22). Sampson further explained that he sued George Phillips because "[h]e runs CMHA," (*id.* at pg. 30, lines 21-22), and that he sued Anthony Jackson because "he was the chief of police" of CMHA:

**A. All of them had me arrested. All them was -- I mean, George Phillips was in charge of personnel of CMHA. Anthony Jackson, he was the chief of police of CMHA.**

(*Id.* at pg. 33, lines 12-15).

It is clear, therefore, that a proper resolution of Sampson's alleged claims should not be limited to deciding whether only CMHA is entitled to immunity, but should include an analysis of whether the Individual Defendants are also entitled to immunity under Ohio law. Indeed, this Court has long recognized that a "political subdivision acts through its employees." *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, at ¶ 19; *Spires v. Lancaster* (1986), 28 Ohio St.3d 76, 79; *Drain v. Kosydar*, 54 Ohio St.2d 49, 56. Thus, while

the immunity defenses of CMHA and the Individual Defendants are subject to different legal standards, the fact remains that the question of whether CMHA is entitled to immunity is inherently related to, and will undoubtedly have an impact upon, whether the Individual Defendants are also entitled to immunity. If the Court were to conclude that the Individual Defendants did *not* act with a “malicious purpose, in bad faith, or in a reckless manner” under R.C. 2744.03(B)(6), then both CMHA and the Individual Defendants would be entitled to immunity. Moreover, the Court’s analysis of the Individual Defendants’ immunity defense may provide further support for why the alleged conduct falls outside the scope of employment under R.C. 2744.09(B). Accordingly, in order to ensure that the immunity defenses of both CMHA and the Individual Defendants are properly resolved in a fair, consistent, and comprehensive manner, the Court should accept jurisdiction of both propositions of law.

Indeed, like Proposition of Law No. I, Proposition of Law No. II also presents an issue of public and great general interest that falls within the scope of the Court’s appellate jurisdiction. Political subdivisions are not only concerned with protecting their own immunity; they are equally concerned with protecting the immunity granted to their employees, particularly where, as here, the claims arise from the discretionary acts of the political subdivision’s executive officers in exercising their discretionary enforcement powers. At bottom, the purpose of local governmental immunity is to protect the ability of public officials to carry out discretionary governmental functions without the risk of potential liability. As this Court has observed, a political subdivision generally cannot be sued for “the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *See Elston*, 2007-Ohio-2070, at ¶ 28; *see also* R.C. 2744.03(A)(3). The same is true for the political subdivision’s employees who, as the

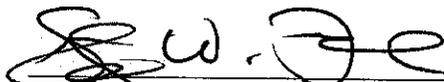
Eighth District Court of Appeals has held, are also entitled to immunity regarding how they exercise discretionary “enforcement powers.” See *Fuller v. Cuyahoga Metropolitan Hous. Authority*, 8<sup>th</sup> Dist. No. 92270, 2009-Ohio-4716, at ¶ 20 (granting immunity to both CMHA and its police officers for claims arising from the arrest of an off-duty employee).

While it is true that governmental officials are not be entitled to immunity if they act with a “malicious purpose, in bad faith, or in a reckless manner,” this legal standard is very “high” and cannot be established unless there is specific evidence that the employee acted with a “perverse disregard of a known risk” and with the “accompanying knowledge that ‘his conduct in all probability result in injury.’” See *O’Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d 505, at ¶ 74-75, 92. Here, as set forth in Appellants’ jurisdictional memorandum, the Eighth District’s opinion does not cite any evidence of any specific misconduct by the Individual Defendants that would satisfy this legal standard. Rather, the Eighth District’s opinion merely cites evidence relating to alleged errors in how CMHA conducted its investigation and in how CMHA elected to arrest the employees at the workplace that, at bottom, is improperly seeking to use the benefit of 20/20 hindsight to second-guess how CMHA’s executive officers exercised their discretionary enforcement powers. This is not how immunity defenses should be decided under Ohio law. *Id.* at ¶ 76. Accordingly, given that the Court has already accepted jurisdiction over Proposition of Law No. I, Appellants respectfully request that the Court also accept jurisdiction over Proposition of Law No. II and determine whether *all* of the Defendants are entitled to immunity under R.C. Chapter 2744.

CONCLUSION

For these reasons, therefore, the Court should reconsider its refusal to accept jurisdiction over Appellants' Proposition of Law No. II and accept jurisdiction over the entire appeal in order to decide whether both CMHA *and* the Individual Defendants are entitled to immunity from Sampson's alleged tort claims under Ohio law.

Respectfully submitted,



Aretta K. Bernard (039116)  
Stephen W. Funk (0058506)  
ROETZEL & ANDRESS, LPA  
222 South Main Street  
Akron, OH 44308  
Telephone: (330) 376-2700  
Facsimile: (330) 376-4577  
[abernard@ralaw.com](mailto:abernard@ralaw.com); [sfunk@ralaw.com](mailto:sfunk@ralaw.com)

*Attorneys for Appellants CMHA, Anthony Jackson  
George Phillips and Ronald Morenz*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of December, 2011, a true and correct copy of the foregoing *Motion for Reconsideration* was served via regular U.S. mail upon the following counsel of record:

Nancy C. Schuster, Esq.  
Schuster & Simmons  
2913 Clinton Avenue  
Cleveland, OH 44113

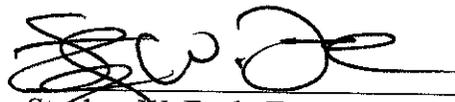
*Attorney for Plaintiff-Appellee*

Stephen L. Byron, Esq.  
Rebecca K. Schaltenbrand, Esq.  
Schottenstein Zox & Dunn Co.  
4230 State Route 306, Suite 240  
Willoughby, OH 44084

Stephen J. Smith, Esq.  
Schottenstein Zox & Dunn Co.  
250 West Street  
Columbus, OH 43215

John Gotherman, Esq.  
Ohio Municipal League  
175 S. Third Street, #510  
Columbus, OH 43215-7100

*Counsel for Amicus Curiae  
The Ohio Municipal League*

  
\_\_\_\_\_  
Stephen W. Funk, Esq.