

**IN THE SUPREME COURT OF OHIO**

<b>DARRELL SAMPSON,</b>	)	CASE NO. 2010-1561
	)	
Plaintiff-Appellee,	)	On Appeal from the Cuyahoga County
	)	Court of Appeals, Eighth Appellate
v.	)	District, Case No. 09-093441
	)	
<b>CUYAHOGA METROPOLITAN</b>	)	
<b>HOUSING AUTHORITY, et al.</b>	)	
	)	
Defendants-Appellants.	)	

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**APPELLANTS' MERIT BRIEF**

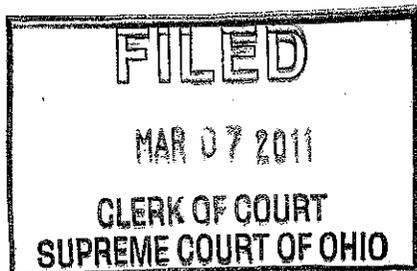
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## INTRODUCTION

This Court has long held that political subdivisions are entitled to immunity from intentional tort claims under R.C. Chapter 2744.02. *See Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 452, 1994-Ohio-394, 639 N.E.2d 105. In an *en banc* opinion decided on July 22, 2010, however, the Eighth District Court of Appeals has held that R.C. 2744.09(B) creates an exception for intentional tort claims alleged by a public employee if they “arise out of the employment relationship” with the political subdivision. *See Sampson v. Cuyahoga Metropolitan Housing Authority*, Journal Entry and Opinion En Banc No. 93441 (July 22, 2010) (copy attached in Appendix) (App. A1-A29). This holding should be reversed by this Court because it wrongfully expands the scope of political subdivision liability under R.C. Chapter 2744 and will undermine the bright-line rule that has long protected political subdivisions from intentional tort claims in the State of Ohio.

As discussed below, the vast majority of the appellate courts in Ohio “have determined that an employer intentional tort is not excepted under R.C. 2744.09(B) from the statutory grant of immunity to political subdivisions.” *Zieber v. Heffelfinger* (Mar. 17, 2009), Fifth Dist. No. 08CA0042, 2009-Ohio-1227, at ¶ 29 (citing cases); *see also Williams v. McFarland Properties, LLC*, 177 Ohio App.3d 490, 2008-Ohio-3594, 895 N.E.2d 208, at ¶ 19; *Coats v. City of Columbus* (Feb. 22, 2007), 10<sup>th</sup> Dist. App. No. 06AP-681, 2007-Ohio-761, at ¶ 14-15; *Terry v. Ottawa County Board of Mental Retardation & Developmental Disabilities*, 151 Ohio App.3d 234, 2002-Ohio-7299, 783 N.E.2d 959, at ¶ 21; *Schmitz v. Xenia Bd. Of Edn.* (Jan. 17, 2003), 2d Dist. No. 2002-CA-69, 2003-Ohio-213, at ¶ 15-21; *Sabulsky v. Trumbull Cty.* (Dec. 27, 2002), 11<sup>th</sup> Dist. No. 2001-T-0084, 2002-Ohio-7275, at ¶ 17-21; *Engelman v. Cincinnati Bd. of Edn.* (June 22, 2001), 1st Dist. No. C-000597, 2001 WL 705575, at \*4-5; *Stanley v. City of*

*Miamisburg* (Jan. 28, 2000), 2d Dist. No. 17912, 2000 WL 84645, at \*7-8; *Abdalla v. Olexia* (Oct. 6, 1999), 7<sup>th</sup> Dist. No. 97-JE-43, 1999 WL 803592, at \*11; *Ventura v. City of Independence* (May 7, 1998), 8<sup>th</sup> Dist. No. 72526, 1998 WL 230429, at \*7-8; *Ellithorp v. Barberton City Sch. Dist.* (July 9, 1997), 9<sup>th</sup> Dist. No. 18029, 1997 WL 416333, at \*2-3.

The rationale underlying this bright-line rule is based upon the reasoning of this Court in *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, which held that an employer's intentional tort against an employee, by definition, does not arise out of the employment relationship, even if it occurs at the workplace. As this Court explained in *Brady*, “[w]hen an employer intentionally harms his employee, that act effects a complete breach of the employment relationship, and for purposes of the legal remedy for such injury, the two parties are not employer and employee, but intentional tortfeasor and victim.” *Id.* at 634. Thus, even if the employee's alleged intentional tort claim occurred at the workplace and related to the plaintiff's employment, the intentional tort does not, by definition, arise “out of the employment relationship” as a matter of law. *Zieber*, 2009-Ohio-1227, at ¶ 29.

Here, Appellee Darrell Sampson (“Sampson”) has alleged three common law tort claims for intentional infliction of emotional distress, abuse of process, and negligent “misidentification” arising from a criminal investigation and arrest of 13 employees by the Cuyahoga Metropolitan Housing Authority (“CMHA”), a political subdivision with independent law enforcement authority under R.C. 3735.31. None of the statutory exceptions in R.C. 2744.02 to political subdivision immunity are applicable here, and yet the Eighth District Court of Appeals has held that CMHA is not entitled to immunity because Sampson's claims allegedly arise out of the “employment relationship” under R.C. 2744.09(B). This statutory exception, however, was meant to apply to employment-related claims that are based upon rights created by

or dependent upon the existence of the employment relationship, not to common law tort claims that are based upon alleged tort injuries arising from an employee's arrest for alleged criminal conduct. *Fuller v. Cuyahoga Metropolitan Housing Auth.*, 334 Fed.Appx. 732, 2009 WL 1546372, at \*\*4-5 (6<sup>th</sup> Cir. June 3, 2009); *Nungester v. City of Cincinnati* (1995), 100 Ohio App.3d 561, 567. Here, all of Sampson's common law tort claims are not based upon rights that arise "out of the employment relationship," but are based upon alleged tort injuries that were allegedly caused by the wrongful acts by an alleged "tortfeasor." Accordingly, the Court should reverse the Eighth District's judgment and conclude that none of Sampson's claims arise out of the employment relationship as a matter of law.

#### **STATEMENT OF FACTS**

##### **A. CMHA's Investigation and Arrest of 13 Employees.**

This case arises from the criminal investigation and arrest of 13 employees of the Cuyahoga Metropolitan Housing Authority ("CMHA") for the criminal charges of theft in office and misuse of credit cards in July/August of 2004. It is undisputed that CMHA is a "political subdivision" under Section 3735.31 of the Ohio Revised Code. *Moore v. Lorain Metropolitan Housing Authority*, 121 Ohio St.3d 455, 2009-Ohio-1250, 905 N.E.2d 606, at ¶ 18-19. Moreover, it is undisputed that CMHA's police department may "exercise full arrest powers" and "perform any police function, exercise any police power, or render any police service within specified areas of the county, municipal corporation, or township for the purpose of preserving the peace and enforcing all laws of the state, ordinances of the municipal corporation, or regulations of the township." R.C. 3735.31(E) (App. A57-A58).

In this regard, the criminal investigation that ultimately led to the arrest and prosecution of the 13 CMHA employees was commenced in July 2004, after CMHA's police department

received an anonymous tip on the CMHA TIPS telephone hotline. Upon receipt of the anonymous tip, Lt. Ronald Morenz began a criminal investigation into possible misuse of gas credit cards by all of the employees in the CMHA plumbing department. (Deposition of Lt. Ronald Morenz, pp. 44-45, 77-79) (Supplement to Briefs, pp. 112, 114). Among other things, Morenz requested records from the gas card company (Wright Express) and requested employee time cards. (Morenz Dep. 69, 77) (Supp. 113-114). After comparing employee work schedules/time-cards against Wright Express's gas credit card records/purchases, Morenz observed that there were discrepancies with certain gas card purchases involving some of the CMHA plumbers, including Plaintiff Darrell Sampson. (Morenz Dep. Ex. 15). Morenz then presented the results of his investigation to the Cuyahoga County Prosecutor who approved the arrest of six employees in CMHA's plumbing department for the improper use of gas credit cards and theft in office. (Morenz Dep. 179-180, 182) (Supp. 121-122).

In addition to the approving the arrest of the six CMHA plumbers, the CMHA police department also consulted with the Cuyahoga County Prosecutor about the results of a separate criminal investigation relating to CMHA painters who were improperly abusing overtime. (Deposition of Anthony Jackson, pp. 69-71) (Supp. 130). Both investigations concluded at about the same time. (*Id.*) In total, the two criminal investigations resulted in the arrests of 13 employees (six plumbers and seven painters). (Deposition of George Phillips, pp. 87-91) (Supp. 147-148). With respect to all 13 arrests, it is undisputed that the arrests were all reviewed and approved by the Cuyahoga County Prosecutor before they were effectuated by the CMHA police department. (Morenz Dep. 179-180, 182) (Supp. 121-122); (Jackson Dep. 69-71) (Supp. 130).

With respect to the method of arresting the employees, everyone was in agreement that the best way to effectuate the arrests was to arrest all 13 employees at the same time at a

previously scheduled maintenance employee meeting on August 31, 2004. (Phillips Dep. 87-88) (Supp. 147); (Jackson Dep. 70-71) (Supp. 130). CMHA has approximately 1,000 employees, over 60 buildings, 14,000 households, and serves 53,000 people, so it was determined that all 13 arrests could best be effectuated upon CMHA's premises at the same time, rather than to arrest the employees at their private residences. (Phillips Dep. 104-105); (Jackson Dep. 71, 111-112) (Supp. 130, 135). Indeed, under R.C. 3735.31(D), CMHA's law enforcement authority generally does not extend beyond CMHA's housing projects and, as CMHA Executive Director and Chief of Police explained, CMHA does not have the resources for their police to leave their day-to-day responsibilities at CMHA facilities to arrest 13 different people at the 13 different home residences. (*Id.*) Indeed, this was not the first large scale arrest CMHA has ever handled. CMHA police arrested over 30 people at the same time on at least two occasions in the past (only 13 people were arrested in this case). (Morenz Dep. 208) (Supp. 125). Thus, CMHA decided, in the exercise of discretion, to arrest all 13 employees at a meeting of maintenance employees that was scheduled to take place on August 31, 2004. (Jackson Dep. 70-71, 79) (Supp. 130-131).

At the August 31<sup>st</sup> meeting, the 13 employees were each called into a separate area in the back of the warehouse behind a wall/partition (out of view of the participants in the meeting) and then arrested. (Phillips Dep. 100-103) (Supp. 149-150); (Deposition of Ray Morgan, pp. 141-142) (Supp. 160). CMHA set up the wall/partition, so that the 13 arrestees could not be seen by the other employees during the actual arrests. (Phillips Dep. 100-103) (Supp. 149-150). In fact, since the wall/partition was in place, Sampson admitted that he did not even know if the other CMHA employees could see him being arrested. (Sampson Dep. 26-27) (Supp. 170); (Morgan Dep. 140-143) (Supp. 160). Once the arrestees were booked in the warehouse, they were taken out of the warehouse (through a back door) two or three at a time and placed into police vehicles.

(Jackson Dep. 83-84) (Supp. 132); (Sampson Dep. 26-27) (Supp. 170). The media was never inside the warehouse. (Jackson Dep. 84) (Supp. 132). While some media were waiting in the parking lot outside of the warehouse, nobody from CMHA ever called the media to come to the parking lot. (Phillips Dep. 106-107) (Supp. 151); (Jackson Dep. 94-95) (Supp. 134); (Morenz Dep. 205-207) (Supp. 125); (Morgan Dep. 145-146) (Supp. 161).

After the arrest, CMHA issued a press release and held a press conference at CMHA's headquarters, which is located at a different location from the maintenance warehouse.<sup>1</sup> (Jackson Dep. 85-88) (Supp. 133). Issuing a press release and holding a press conference is the standard way that CMHA has handled three to five other large-scale arrests in the past. (Jackson Dep. 93) (Supp. 134). In those three to five prior arrests, the media also showed up in the parking lot as the arrestees were leaving the building and, like here, the media was never invited to attend the arrest. (Jackson Dep. 93) (Supp. 134). Whenever a substantial number of people are arrested at CMHA, a press release and press conference is conducted because people generally want to know about arrests that occur at a public entity like CMHA. (Jackson Dep. 87-88) (Supp. 133); (Morenz Dep. 157-158) (Supp. 120). Here, the press release did not mention Plaintiff by name (the press release only mentions "13 employees" were arrested, but does not mention Plaintiff's name specifically). (*See* CMHA Press Conference Agenda and Press Release, Ex. L) (Supp. 18). Likewise, none of the newspaper articles produced by Sampson in discovery ever mentioned Plaintiff's name. (Def. Ex. G, H, I) (Supp. 12-17).

**B. Sampson's Complaint against CMHA.**

Plaintiff Darrell Sampson was one of the 13 employees who was arrested for theft in office and misuse of credit cards by CMHA. After Sampson was arrested, the Cuyahoga County

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<sup>1</sup> The arrest location was in a warehouse at 4700 Lakeside and the press conference was at CMHA headquarters on West 25<sup>th</sup> Street. (Jackson Dep. 94-95).

Prosecutor elected to present his case to a Cuyahoga County grand jury, which found that there was probable cause to indict Sampson for the felony of theft in office under R.C. 2921.41 and the felony of misuse of credit cards under R.C. 2913.21. (Def. Ex. E, Sampson Indictment, Sept. 2004) (Supp. 9); (Def. Ex. F, Criminal Case Docket for *State of Ohio v. Darrell Sampson*, Case CR-04-457209) (Supp. 10). On the day before Plaintiff's criminal trial, however, the County Prosecutor's office learned that Wright Express was refusing to send a representative to testify about the gas card records (and the County Prosecutor had not subpoenaed Wright Express). (Morenz Dep. 217-219) (Supp. 126). Thus, the County Prosecutor was forced to dismiss the charges against Plaintiff. (*Id.*)

Thereafter, Sampson filed a grievance against CMHA, which resulted in an arbitrator's decision that granted reinstatement with back pay. (See Def. Ex. K, Sampson's First Amended Complaint, at ¶ 16, filed October 16, 2006) (Supp. 4).<sup>2</sup> After the arbitration was concluded, Sampson filed suit against CMHA, its Executive Director, George Phillips, its Police Chief, Anthony Jackson, and Lt. Ronald Morenz, alleging common law tort claims for intentional infliction of emotional distress, negligent infliction of emotional distress, abuse of process, and "negligent misidentification." (*Id.* at ¶ 18-40) (Supp. 4-6). Upon review, however, the trial court dismissed the claim for negligent infliction of emotional distress because it found that Ohio law did not recognize a such a claim "where the stress is caused by a nonexistent physical peril." (See Trial Court's Order of October 2, 2007) (citing *Dobran v. Franciscan Med. Ctr.* (2004), 102 Ohio St.3d 54) (App. A47).

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<sup>2</sup> Approximately six months after his reinstatement by the arbitrator, Sampson submitted a notice of voluntary resignation to CMHA. (Sampson's Resignation Letter, dated 12/26/06) (Def. Ex. N) (App. 58). Thus, Sampson has not been employed by CMHA since December 26, 2006.

After discovery, CMHA, Phillips, Jackson, and Morenz filed motions for summary judgment, arguing that they were entitled to immunity under R.C. 2744.02 and 2744.03, respectively. Among other things, CMHA argued that none of the statutory exceptions to political subdivision immunity in R.C. 2744.02 applied to Sampson's claims, which all arose out of CMHA's criminal investigation and arrest of Sampson. Moreover, CMHA argued that the Individual Defendants were entitled to immunity because their alleged conduct involved the exercise of discretion and was not committed in a "wanton and reckless manner" under R.C. 2744.03(A)(6). In response, Sampson argued, among other things, that CMHA was not entitled to immunity under R.C. 2744.09(B), which provides that "[t]his chapter does not apply to, and shall not be construed to apply to, the following:

(B) Civil actions by an employee, or the collective bargaining representative of an employee, against his political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision."

*Id.* (App. A56). CMHA strongly opposed this position, arguing that R.C. 2744.09(B) did not apply to Sampson's claims because they were all intentional tort claims that did not arise out of the employment relationship under Ohio law.

Upon review, the trial court issued a Journal Entry, dated June 4, 2009, that denied Defendants' Motion for Summary Judgment because it found that there was a material issue of fact relating to whether Defendants' actions were committed in a "wanton and reckless manner." Additionally, the trial court found that "R.C. 2744.09(B) does not bar plaintiff's claims because they are all based in tort and [d]o not 'arise out of the employment relationship.'" (Journal Entry, dated June 4, 2009) (App. A46). CMHA and the Individual Defendants then filed an appeal relating to denial of immunity to the Eighth District Court of Appeals under R.C. § 2744.02(C). *See Hubbell v. City of Xenia* (2007), 115 Ohio St.3d 77, 2007-Ohio-4839.

Upon review, a three-judge panel held that CMHA was not entitled to immunity from Sampson's common law tort claims because they arose out of the "employment relationship" within the meaning of R.C. 2744.09(B). *See Sampson v. Cuyahoga Metropolitan Housing Authority* (March 25, 2010), 8<sup>th</sup> Dist. No. 93441, 2010-Ohio-1214, at ¶ 22-30 (App. A30-A45). The panel's opinion conflicted with other Eighth District cases, however, which held that R.C. 2744.09(B) does not apply to intentional tort claims, including claims for intentional infliction of emotional distress and abuse of process by an employee. *See Chase v. Brooklyn City School Dist.* (2001), 141 Ohio App.3d 9, 749 N.E.2d 798; *Nielsen-Mayer v. CMHA* (Sept. 2, 1999), 8<sup>th</sup> Dist. No. 75969, 1999 WL 685635, at \*1; *Ventura v. City of Independence* (May 7, 1998), 8<sup>th</sup> Dist. No. 72526, 1998 WL 230429, at \*7-8 ("R.C. 2744.09(B) does not create an exception to immunity" for "intentional tort and intentional infliction of emotional distress"). Accordingly, upon CMHA's motion, the Eighth District agreed to hold an *en banc* conference in order to resolve this intra-district conflict under 8<sup>th</sup> Dist. Loc. R. 26.

On July 22, 2010, the Eighth District, sitting *en banc*, issued a published opinion that again concluded that CMHA was not immune from Sampson's common law tort claims because they allegedly arose "out of the employment relationship" under R.C. 2744.09(B). *See Sampson v. Cuyahoga Metropolitan Housing Authority* (2010), 188 Ohio App.3d 250, 2010-Ohio-3495, 935 N.E.2d 98, at ¶ 24-37 (App. A1-A29). In so doing, the judges of the Eighth District were split. Five judges joined in the majority opinion, with one judge concurring only in the result. Five judges dissented, in part. Three judges joined in a separate dissenting opinion of Kenneth A. Rocco, which argued that the majority's opinion conflicted with at least 10 other cases from other Ohio appellate courts that all held that "R.C. 2744.09(B) is inapplicable to actions that allege intentional tort by political subdivision employees against their employer." (*Id.* at ¶ 47-

57) (App. A19-A23). Moreover, two other judges dissented because they argued that the “majority’s overbroad holding” improperly “seeks to overturn well reasoned precedent involving classic employer intentional tort cases.” (*Id.* at ¶ 58-66) (App. A23-A29). CMHA then filed a Notice of Appeal to this Court, which accepted jurisdiction over the question of whether R.C. 2744.09(B) created an exception to political subdivision immunity for common law intentional tort claims alleged by a public employee.

### ARGUMENT

**I. Proposition of Law No. I: R.C. 2744.09(B) Does Not Create An Exception To Political Subdivision Immunity For Common Law Intentional Tort Claims Alleged By A Public Employee.**

**A. Common Law Intentional Tort Claims, By Definition, Do Not Arise Out Of The Employment Relationship Under Ohio Law.**

The legal issue presented by this appeal relates to the proper interpretation of Ohio’s Political Subdivision Tort Liability Act, R.C. Chapter 2744, which was enacted by the General Assembly in order to protect political subdivisions from tort liability for claims that may arise against political subdivisions and their employees. It is well-established that a metropolitan housing authority, such as CMHA, is a “political subdivision” under Ohio law. *Moore v. Lorain Metropolitan Housing Auth.*, 121 Ohio St.3d 455, 2009-Ohio-1250, 905 N.E.2d 606, at ¶ 18-19. The question presented by Appellants’ first proposition of law, therefore, relates to whether CMHA, as a political subdivision, is entitled to immunity from Sampson’s common law tort claims under R.C. Chapter 2744, or whether “this chapter does not apply” to Sampson’s claims under R.C. 2744.09(B).<sup>3</sup>

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<sup>3</sup> We note that this Court declined to accept jurisdiction over Appellants’ second proposition of law, which requested that the Court review whether the Individual Defendants were entitled to immunity from Sampson’s claims under R.C. § 2744.03(A)(6).

As this Court has held, the question of whether a political subdivision is entitled to immunity from tort liability under R.C. Chapter 2744 involves a three-tiered analysis:

First, R.C. 2744.02(A)(1) sets out a general rule that political subdivisions are not liable in damages. In setting out this rule, R.C. 2744.02(A)(1) classifies the functions of political subdivisions into governmental and proprietary functions and states that the general rule of immunity is not absolute, but is limited by the provisions of R.C. 2744.02(B), which details when a political subdivision is immune. Thus the relevant point of analysis (the second tier) then becomes whether any of the exceptions in R.C. 2744.02(B) apply. Furthermore, if any of R.C. 2744.02(B)'s exceptions are found to apply, a consideration of the application of R.C. 2744.03 becomes relevant, as the third tier of the analysis.

*Moore*, 121 Ohio St.3d at 457 (citing *Green Cty. Agricultural Soc. v. Liming* (2000), 89 Ohio St.3d 551, 556-557).

Here, it is undisputed that none of the statutory exceptions in R.C. 2744.02(B) apply to Sampson's claims for intentional infliction of emotional distress, abuse of process, and "negligent misidentification," which all arise from CMHA's performance of a governmental law enforcement function relating to the investigation and arrest of Sampson for alleged criminal conduct. *Scott v. City of Cleveland*, 555 F.Supp.2d 890, 900 (N.D. Ohio 2008) (city entitled to immunity from claims for false arrest and imprisonment, assault and battery, malicious prosecution, abuse of process, negligence, and gross negligence); *Rhoades v. Cuyahoga Metropolitan Housing Auth.* (Feb. 10, 2005), 8<sup>th</sup> Dist. No. 84439, 2005-Ohio-505, at ¶13 (CMHA entitled to immunity from claims for false arrest, malicious prosecution, libel and slander, defamation, and invasion of privacy because no exceptions applied); *Barstow v. Waller* (Oct. 26, 2004), 4<sup>th</sup> Dist. No. 04CA5, 2004-Ohio-5746, 2004 WL 2427396, at ¶ 31 (immunity granted for false arrest and imprisonment claims because no exceptions to immunity applied); *Inghram v. City of Sheffield Lake* (Mar. 7, 1996), 8<sup>th</sup> Dist. No. 69302, 1996 WL 100843, at \*2 (city immune from negligence claim that arose out of arrest made on a mistaken identification).

Indeed, it is well-established, as this Court has held, that R.C. 2744.02(B) does not recognize any exception for intentional tort claims. *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 452, 1994-Ohio-394, 639 N.E.2d 105, 107 (holding that “there are no exceptions to immunity for the intentional torts of fraud and intentional infliction of emotional distress”). Yet, notwithstanding this fact, the Eighth District has held that political subdivisions are not entitled to immunity from intentional tort claims by a public employee if they arise out of the “employment relationship” under R.C. 2744.02(B). This *en banc* opinion, however, conflicts with the opinions of virtually all of the other courts of appeals that have examined this issue, including the prior opinions of the Eighth District Court of Appeals, which “have determined that an employer intentional tort is not excepted under R.C. 2744.09(B) from the statutory grant of immunity to political subdivisions.” *Zieber v. Heffelfinger* (Mar. 17, 2009), Fifth Dist. No. 08CA0042, 2009-Ohio-1227, at ¶ 29 (citing cases); *see also Williams v. McFarland Properties, LLC*, 177 Ohio App.3d 490, 2008-Ohio-3594, 895 N.E.2d 208, at ¶ 19; *Coats v. City of Columbus* (Feb. 22, 2007), 10<sup>th</sup> Dist. App. No. 06AP-681, 2007-Ohio-761, at ¶ 14-15; *Terry v. Ottawa County Board of Mental Retardation & Developmental Disabilities*, 151 Ohio App.3d 234, 2002-Ohio-7299, 783 N.E.2d 959, at ¶ 21; *Schmitz v. Xenia Bd. Of Edn.* (Jan. 17, 2003), 2d Dist. No. 2002-CA-69, 2003-Ohio-213, at ¶ 15-21; *Sabulsky v. Trumbull Cty.* (Dec. 27, 2002), 11<sup>th</sup> Dist. No. 2001-T-0084, 2002-Ohio-7275, at ¶ 17-21; *Engelman v. Cincinnati Bd. of Edn.* (June 22, 2001), 1st Dist. No. C-000597, 2001 WL 705575, at \*4-5; *Stanley v. City of Miamisburg* (Jan. 28, 2000), 2d Dist. No. 17912, 2000 WL 84645, at \*7-8; *Abdalla v. Olexia* (Oct. 6, 1999), 7<sup>th</sup> Dist. No. 97-JE-43, 1999 WL 803592, at \*11; *Ventura v. City of Independence* (May 7, 1998), 8<sup>th</sup> Dist. No. 72526, 1998 WL 230429, at \*7-8; *Ellithorp v. Barberton City Sch. Dist.* (July 9, 1997), 9<sup>th</sup> Dist. No. 18029, 1997 WL 416333, at \*2-3.

The rationale underlying this bright-line rule is based upon the reasoning of this Court in *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, which held that an employer's intentional tort against an employee, by definition, does not arise out of the employment relationship, even if it occurs at the workplace. As this Court explained in *Brady*, “[w]hen an employer intentionally harms his employee, that act effects a complete breach of the employment relationship, and for purposes of the legal remedy for such injury, the two parties are not employer and employee, but intentional tortfeasor and victim.” *Id.* at 634. Thus, even if the employee's alleged intentional tort claim occurred at the workplace and related to the plaintiff's employment, the intentional tort does not, by definition, arise “out of the employment relationship” as a matter of law. *Zieber*, 2009-Ohio-1227, at ¶ 29; *Coats*, 2007-Ohio-761, at ¶ 15; *Engelman*, 2001 WL 705575, at \*4-5; *Ellithorp*, 1997 WL 416333, at \*2-3.

This proposition of law is not limited to workplace injuries that are subject to the workers' compensation system, but applies equally to other intentional tort claims, such as fraud, intentional infliction of emotional distress, false arrest, malicious prosecution, conspiracy, and abuse of process. In *Zieber*, for example, a public employee alleged claims against Richland County for intentional infliction of emotional distress and civil conspiracy based upon certain employment-related actions that were taken by a supervisor at the workplace during working hours. *Id.*, 2009-Ohio-1227, 2009 WL 695533, at ¶ 2-9. “While Appellant's injuries arguably occurred within the scope of her employment,” the Fifth District nevertheless held that R.C. 2744.09 was not applicable to the employee's intentional tort claims. *Id.* at ¶ 29. Rather, upon review of the case law, the Fifth District “agreed with the majority of other appellate courts” that “an employer's intentional tort against an employee does not arise out of the employment

relationship” as a matter of law.<sup>4</sup> *Id.*; see also *Coats, supra*, 2007-Ohio-761, at ¶ 14-15 (holding that R.C. 2744.09 does not establish an exception for intentional infliction of emotional distress claim); *Stanley, supra*, 2000 WL 84645, \*1, 7-8 (R.C. 2744.09(B) does not create an exception for defamation, intentional and negligent infliction of emotional distress claims); *Abdalla, supra*, 1999 WL 803592, at \*1, 11 (R.C. 2744.09(B) does not create an exception for intentional tort claims that included claims for intentional and negligent infliction of emotional distress); *Hale v. Village of Madison* (N.D. Ohio May 23, 2006), No. 1:04-CV-1646, 2006 WL 4590879, at \*17-18 (R.C. 2744.09(B) does not create an exception for intentional infliction of emotional distress claim); *Kohler v. City of Wapakoneta*, 381 F. Supp.2d 692, 699-702 (N.D. Ohio 2005) (R.C. 2744.09(B) does not create an exception for intentional infliction of emotional distress and invasion of privacy claims).

This case law has long established a bright-line rule that has been wrongfully undermined by the Eighth District’s *en banc* opinion. Contrary to the Eighth District’s analysis, an intentional tort claim, by definition, does not arise out of the employment relationship merely because it was committed at the workplace by the plaintiff’s employer. Rather, under *Brady* and the other case law cited above, an intentional tort claim arises from the alleged commission of a wrongful act by an “intentional tortfeasor.” In suing a political subdivision to recover damages for an intentional tort claim, therefore, “the two parties are not employer and employee, but intentional tortfeasor and victim.” *Brady*, 61 Ohio St.3d at 634. Accordingly, based upon this

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<sup>4</sup> We note that the courts have applied R.C. 2744.09(B) to employment discrimination, harassment, and retaliation claims alleged by public employees against their political subdivision employers. See, e.g., *Whitehall ex rel. Wolfe v. Ohio Civil Rights Comm’n* (1995), 74 Ohio St.3d 120, 123; *Gessner v. City of Union* (2004), 159 Ohio App.3d 43, 2004-Ohio-5770, 823 N.E.2d 1, at ¶ 47. This case law is inapplicable to this case, however, because employment discrimination claims generally are not classified as “employer intentional torts.” *Gessner*, 2004-Ohio-5770, at ¶ 47; *Carney v. Cleveland Hts.-University Hts. School Dist.* (2001), 143 Ohio App. 415, 424.

long-standing definition of intentional tort claims, the Court should reverse the Eighth District's judgment and re-affirm the bright-line rule that political subdivisions are entitled to immunity from common law intentional tort claims as a matter of law.

**B. None of Sampson's Claims Arise Out Of The Employment Relationship Under R.C. 2744.09.**

In light of the above-referenced case law, the Court should conclude that R.C. 2744.09(B) does not apply to Sampson's intentional tort claims for intentional infliction of emotional distress and abuse of process. Moreover, it also does not apply to Sampson's claim for "negligent misidentification," which is essentially a false arrest claim that is based upon the allegation that "Defendants acted maliciously, in bad faith, and in a wanton and reckless manner" in arresting Sampson for his alleged criminal conduct. (Def. Ex. K, First Amd. Compl., ¶ 39).<sup>5</sup> All of Sampson's claims in fact are based upon allegations of intentional conduct by the Defendants who allegedly "acted maliciously, in bad faith, and in a wanton and reckless manner." (*Id.* at ¶ 20, 28, 33, 39). Thus, all of Sampson's claims do not arise out of the employment relationship, but are based upon alleged tort injuries arising from the wrongful acts of an alleged intentional tortfeasor. Accordingly, for purposes of the common law tort claims alleged in the First Amended Complaint, Sampson and CMHA "are not employer and employee, but intentional tortfeasor and victim" under Ohio law. *Brady*, 61 Ohio St.3d at 634.

Indeed, it is far from clear why *any* of Sampson's common law tort claims should fall within the scope of the exception that was granted by the General Assembly for employment-related claims under R.C. 2744.09(B). In general, the Ohio courts have recognized a difference

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<sup>5</sup> We note that the Individual Defendants strongly dispute the allegation that they "acted maliciously, in bad faith, and in a wanton and reckless manner," as alleged in the Complaint, and that they are therefore entitled to immunity under R.C. 2744.03(A)(6). This Court declined to review this issue, however, in accepting jurisdiction over this appeal.

between employment-related claims that seek to enforce rights that are afforded to a person based upon his or her status as an employee, and common law tort claims that seek to enforce “purely personal rights” that are not “created by or dependent upon” the “existence of an employment relationship” between the parties. *See Fuller v. Cuyahoga Metropolitan Housing Auth.*, 334 Fed.Appx. 732, 2009 WL 1546372, at \*\*4-5 (6<sup>th</sup> Cir. June 3, 2009) (applying Ohio law); *Lentz v. City of Cleveland*, 410 F.Supp.2d 673, 697 (N.D. Ohio 2006) (applying Ohio law); *Nungester v. Cincinnati* (1995), 100 Ohio App. 3d 561, 566, 654 N.E.2d 423.

In *Fuller*, for example, the U.S. Court of Appeals for the Sixth Circuit also was asked to address the scope of R.C. 2744.09(B) with respect to common law tort claims that arose from the arrest of a CMHA employee. *Id.*, 2009 WL 1546372, at \*1. Although Fuller alleged that the CMHA police used excessive force in effectuating his arrest, he also alleged claims for intentional infliction of emotional distress and malicious prosecution. *Id.* With respect to the intentional infliction and malicious prosecution claims, the Sixth Circuit held that the immunity exception in R.C. § 2744.09(B) did not apply because Fuller’s claims did not arise out the employment relationship. *Id.* at \*4. Rather, the Sixth Circuit found “[t]he rights he asserted are ‘purely personal rights’ that in no way are ‘created or dependent upon’ the existence of [plaintiff Fuller’s] employment relationship” as a matter of law. *Id.* at \*5.

This ruling is consistent with other cases that have addressed the scope of the employment relationship exception in R.C. 2744.09(B). In *Lentz v. City of Cleveland*, 410 F.Supp.2d 673 (N.D. Ohio 2006), for example, the City of Cleveland was subject to common law tort claims for malicious prosecution and abuse of process by one of its police officers who became subject to criminal prosecution as a result of the use of force in the performance of his duties as a police officer. Although his criminal prosecution arose from his actions as a police

officer, the district court held that the city was immune from liability because Lentz's malicious prosecution and abuse of process claims were based upon "personal rights" that were not created by or dependent upon Lentz's employment relationship with the City. *Id.* at 697.

The same legal analysis should be applied to Sampson's claims against CMHA. Like Fuller and Lentz, Sampson's claims for intentional infliction of emotional distress, abuse of process, and negligent misidentification all seek to enforce "purely personal rights" arising from his arrest for alleged criminal conduct. None of his claims seek to enforce any rights arising out of his employment relationship with CMHA. In this regard, the Eighth District's *en banc* opinion has adopted an overly broad interpretation of what constitutes a claim that "arises out of the employment relationship." A claim does not arise out of the "employment relationship" merely because the alleged tort occurred at the workplace or was committed by the employer. Rather, a claim arises out of the "employment relationship" if it arises from and is based upon legal rights that were created by the existence of an "employment relationship" between the parties. Thus, where, as here, a common law tort claim is not based upon a right "created by or dependent upon" the employment relationship, then it does not "arise out of the employment relationship" and should be treated in the same manner as any other common law tort claim under R.C. Chapter 2744.

Indeed, R.C. 2744.09(B) was not intended to grant public employees with *greater* rights to sue political subdivisions than other private citizens. Rather, R.C. 2744.09(B) was merely intended to ensure that public employees enjoyed the *same* ability as private employees to enforce the rights arising from the existence of an "employment relationship." Thus, R.C. 2744.09(B) has been applied to statutory claims for employment discrimination, harassment, and retaliation arising out of the employment relationship. *See, e.g., Whitehall ex rel. Wolfe v. Ohio*

*Civil Rights Comm'n* (1995), 74 Ohio St.3d 120, 123; *Gessner v. City of Union* (2004), 159 Ohio App.3d 43, 2004-Ohio-5770, 823 N.E.2d 1, at ¶ 47. Moreover, it would apply to other employment-related claims arising out of the rights granted by Ohio's collective bargaining statutes and workers' compensation laws. *See, e.g., Fabian v. City of Steubenville* (Ohio App. 7<sup>th</sup> Dist. 2001), 2001-Ohio-3522, 2001 WL 1199061 at \*4 (discussing the collective bargaining statutes and workers' compensation laws in determining the meaning of R.C. 2744.09(B)).

R.C. 2744.09(B) should not be construed, however, to permit a public employee to enjoy greater rights to sue political subdivisions for other types of common law torts that are not based upon the rights arising out of the employment relationship. The common law tort claims of public employees should be governed by the same legal standards as any other common law tort claim that may be filed by any other citizen who alleges a tort injury arising from the commission of a wrongful act by an alleged tortfeasor. Thus, if the tort claim is based upon purely personal rights that are not created by or dependent upon the employment relationship, then the public employee's tort claims should be subject to the same immunity standards as any other common law tort claim that may be alleged against a political subdivision. *Fuller*, 2009 WL 1546372, at \*1; *Lentz*, 410 F. Supp.2d at 697; *Nungester*, 100 Ohio App. 3d at 566

Indeed, to the extent that Sampson were to allege any claims based upon the rights granted to him as an employee of CMHA, then his remedies would have been governed by the Collective Bargaining Agreement between CMHA and the Service Employee's International Union Local 47 (Def. Ex. M), and by Ohio's collective bargaining statute, R.C. Chapter 4117, which sets forth the exclusive remedies for employees subject to a collective bargaining agreement. *See Franklin Cty. Law Enforcement Ass'n v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 170-171. Under such circumstances, in fact, such claims

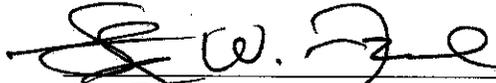
may not have been subject to the jurisdiction of the common pleas court at all. *See Bringheli v. Parma City School Dist.* (June 25, 2009), 8<sup>th</sup> Dist. No. 91064, 2009-Ohio-3077 (court lacked subject matter jurisdiction over claims that are subject to exclusive remedies in R.C. Chapter 4117).

In this regard, CMHA is not arguing that Sampson's claims arose out of his employment relationship or that he should have filed his tort claims as a grievance under the collective bargaining agreement. Rather, CMHA is arguing that Sampson's common law tort claims did not arise out of his employment relationship because they are not based upon, or seeking to enforce, any legal rights arising out of the employment relationship, and that they therefore should be subject to the same immunity standards as all other common law tort claims under Ohio law. Sampson should not be given special treatment. His common law intentional tort claims, by definition, did not arise out of his employment relationship with CMHA, but arose from his arrest for alleged criminal conduct. Accordingly, his tort claims should be subject to the same immunity standards that govern all other common law tort claims under the Political Subdivision Tort Liability Act.

**CONCLUSION**

For these reasons, therefore, the Court should reverse the court of appeals' judgment and hold that R.C. 2744.09(B) does not apply to Sampson's common law tort claims and that CMHA is entitled to political subdivision immunity from all of Sampson's claims under R.C. 2744.02.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of March, 2011, a true and correct copy of the foregoing *Appellants' Merit Brief* was served via regular U.S. mail upon the following counsel of record:

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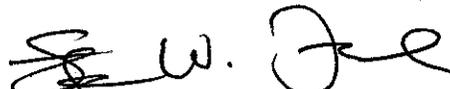
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# **APPENDIX**

Request Publication

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
EN BANC  
No. 93441

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**DARRELL SAMPSON**

PLAINTIFF-APPELLEE

vs.

**CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-600324

**BEFORE:** En Banc Court

**RELEASED:** July 22, 2010

**JOURNALIZED:** JUL 23 2010

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FILED AND JOURNALIZED  
PER APPR. 22(0)

JUL 22 2010

HOWARD E. FURST  
CLERK OF THE COURT OF APPEALS  
DEPT.

MARY EILEEN KILBANE, J.:

Pursuant to Loc.App.R. 26 and in accordance with *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672, this court held an en banc conference to address an alleged conflict between *Sampson v. CMHA*, 8th Dist. No. 98441, 2010-Ohio-1214, and several other cases from this appellate district.

Appellee, Darrell Sampson ("Sampson"), brought suit against Cuyahoga Metropolitan Housing Authority ("CMHA") and three of its employees, George Phillips ("Phillips"), Anthony Jackson ("Jackson"), and Ronald Morenz ("Morenz") (collectively "appellants"), alleging that appellants negligently accused him of theft and arrested him. Appellants filed a motion for summary judgment with the trial court alleging they were immune from suit. The trial court denied the motion and appellants filed the instant appeal.

#### Facts

Sampson was raised in a CMHA housing development. In 1988, at age 22, CMHA hired him as a groundskeeper. In 2000, Sampson was promoted to the position of Serviceman V Plumber. CMHA plumbers work in the Property Maintenance Department, reporting for work each day at the plumbers' shop, which is located at 4315 Quincy Avenue, Cleveland, Ohio. At the plumbers'

shop, they punch in for work, pick up their tools, and receive their work assignments for the day.

The plumbers service the CMHA properties in Cleveland as well as the surrounding suburbs, and CMHA provides the plumbers with numerous vehicles to drive to these locations. Gasoline credit cards were assigned to CMHA vehicles so that employees could purchase gasoline for the vehicles using their individual employee PIN numbers provided by CMHA.

On July 20, 2004, CMHA received an anonymous tip on the CMHA "tips hotline," accusing plumber Alvin Roan ("Roan") of using a CMHA gasoline credit card to purchase gasoline for his personal vehicle. Lieutenant Ronald Morenz ("Lieutenant Morenz") worked at the CMHA Police Detective Bureau and was assigned to investigate the allegations against Roan under the supervision of CMHA Police Chief Anthony Jackson ("Chief Jackson"), who worked under the direction of CMHA Executive Director George Phillips ("Director Phillips").

Lieutenant Morenz investigated Roan and the other plumbers for approximately four weeks. On August 27, 2004, Director Phillips, along with Chief Jackson, called a special meeting of CMHA employees. Director Phillips, Chief Jackson, and Lieutenant Morenz, all orchestrated a plan to arrest numerous plumbers, as well as painters (the subjects of a separate investigation), at the employee meeting. When Director Phillips had worked at the Chicago

Housing Authority, he had witnessed a very similar mass arrest, where numerous Chicago Housing Authority employees were arrested by police at a warehouse. (Deposition of Phillips at 75.) Director Phillips determined that arresting the employees in front of 200 of their fellow coworkers would save them the embarrassment of being arrested at home in front of their children. (Deposition of Phillips at 104.) Director Phillips and Chief Jackson issued a press release detailing the agenda for a press conference to be held on August 31, 2004, at 10:30 a.m., immediately following the employee meeting regarding employee theft and arrests.

On August 30, 2004, the plumbers were told not to follow their daily routine of reporting to the plumbers' shop on Quincy Avenue the following morning, but rather to report for work directly to the CMHA warehouse located at 4700 Lakeside Avenue, Cleveland, Ohio for an employee meeting.

On August 31, 2004, approximately 200 CMHA employees gathered at the CMHA warehouse. Sergeant Ray Morgan ("Sergeant Morgan") of the CMHA Community Policing Unit announced the names of 13 CMHA employees, including Sampson. Sergeant Morgan then announced that the 13 individuals (six plumbers and seven painters) were under arrest for theft. The men were handcuffed and searched in front of their fellow CMHA employees. The arrested employees were then taken behind a partition where they were photographed and

then led outside into waiting patrol cars. Television news cameras were present outside and photographed the arrested employees, video of which later aired on local news broadcasts depicting the identity of those arrested. Appellants maintain that they did not contact the media prior to the arrests.

Arrested employees spent the night in jail before being released the following day without charges. All arrested employees were placed on administrative leave from their positions with CMHA.

On October 7, 2004, Sampson and several other plumbers were indicted on theft, misuse of credit cards, and theft in office. The State contended that Sampson had misused the gasoline credit cards provided for the CMHA vehicles. On February 2, 2005, nearly five months after his arrest at the employee meeting, the State dismissed the charges.

On November 22, 2005, an arbitration hearing was held to determine whether Sampson should be reinstated to his position with CMHA. Ultimately, the arbitrator concluded that CMHA had failed to present any evidence of gasoline theft and ordered that Sampson be reinstated. The arbitrator stated in pertinent part:

**"There were other failures in Lt. Morenz's investigation. Lt. Morenz testified that he did not check to see if each vehicle in the Property Maintenance Department had its own gas card until September 2004. At no time did he talk to Grievant or any of his co-workers. \* \* \* In the face of the evidence, the arbitrator finds that the preponderance of the evidence shows**

no theft of gasoline at all, much less any evidence that the grievant was guilty of such theft.”

In March 2006, Sampson returned to work for CMHA. According to Sampson, the position he returned to involved different duties than his position prior to the arrest. Further, Sampson claims that he was no longer permitted to retrieve his own equipment or drive CMHA vehicles. Sampson was subsequently diagnosed with posttraumatic stress disorder.

#### Procedural Background

On August 31, 2006, Sampson filed suit against appellants, alleging intentional infliction of emotional distress, negligent infliction of emotional distress, and abuse of process. Sampson later amended his complaint to include negligent misidentification.

On November 3, 2006, appellants filed a motion for judgment on the pleadings with respect to the negligent infliction of emotional distress. On November 17, 2006, after receiving one extension of time, Sampson filed his brief in opposition. On December 5, 2006, appellants filed their reply brief. On October 2, 2007, the trial court granted the motion, dismissing the negligent infliction of emotional distress claim but leaving all other claims pending.

On December 12, 2008, appellants filed a motion for summary judgment, alleging sovereign immunity on all remaining claims. On January 9, 2009,

Sampson filed his brief in opposition. On January 13, 2009, appellants filed their reply brief.

On June 4, 2009, the trial court denied the motion for summary judgment, finding that a genuine issue of material fact still existed as to whether appellants' conduct was wanton or reckless.

Appellants filed the instant appeal pursuant to R.C. 2744.02, which allows political subdivisions and employees of political subdivisions to immediately appeal an order that denies immunity, asserting two assignments of error.

#### ASSIGNMENT OF ERROR NUMBER ONE

**"THE TRIAL COURT ERRED AS A MATTER OF LAW, IN THE PREJUDICE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY IN NOT DISMISSING ALL CLAIMS AGAINST IT ON SUMMARY JUDGMENT BECAUSE POLITICAL SUBDIVISIONS ARE ABSOLUTELY IMMUNE FROM INTENTIONAL TORT CLAIMS PURSUANT TO OHIO REVISED CODE 2744 AND NO EXCEPTION TO IMMUNITY APPLIES TO PLAINTIFF'S NEGLIGENT MISIDENTIFICATION CLAIM."**

CMHA argues that it is immune from suit pursuant to R.C. 2744.02.

Sampson argues that pursuant to R.C. 2744.09, CMHA is barred from raising immunity in this case.

#### Summary Judgment Standard

In Ohio, appellate review of summary judgment is de novo. *Comer v. Risko* 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712. "Accordingly, we afford

no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate." *Mobsy v. Sanders*, 8th Dist. No. 92605, 2009-Ohio-6459, at ¶11, citing *Hollins v. Schaffer*, 182 Ohio App.3d 282, 286, 2009-Ohio-2136, 912 N.E.2d 637.

The Ohio Supreme Court stated the appropriate test in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 1998-Ohio-389, 696 N.E.2d 201, as follows: "Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor." See, also, *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 374, 2005-Ohio-2163, 826 N.E.2d 832, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

#### Analysis

Political subdivisions are immune from suit, with the exception of limited situations provided for by statute. *Campolieti v. Cleveland*, 8th Dist. No. 92238, 2009-Ohio-5224, 921 N.E.2d 286, at ¶32, citing *Hodge v. Cleveland* (Oct. 22, 1998), 8th Dist. No. 72233. Whether a political subdivision is immune from liability is a question of law that should be resolved by the trial court, preferably on a motion for summary judgment. *Sabulsky v. Trumbull Cty.*, Trumbull App. No. 2001-T-

0084, 2002-Ohio-7275, at ¶7, citing *Conley v. Shearer* (1992), 64 Ohio St.3d 284, 595 N.E.2d 862.

In the motion for summary judgment, CMHA argued that it was entitled to immunity from suit pursuant to R.C. 2744.02, which states:

**“[A] political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.”**

In response, Sampson maintains that R.C. 2744.02 is inapplicable pursuant to an express exception outlined in R.C. 2744.09(B), which states that Ohio Revised Code Chapter 2744 shall not apply to “[c]ivil actions by an employee \* \* \* against his political subdivision relative to any matter that *arises out of the employment* relationship between the employee and the political subdivision.” (Emphasis added.)

CMHA argues that none of Sampson’s causes of action stemmed from his employment, particularly his claim for intentional infliction of emotional distress. However, after a review of the facts and pertinent law, we find that all of Sampson’s claims, including his claim for intentional infliction of emotional distress, clearly arose out of his employment relationship, thus barring CMHA from asserting immunity pursuant to R.C. 2744.09(B).

CMHA argues that *Fuller v. CMHA*, 8th Dist. No. 92270, 2009-Ohio-4716, and *Inghram v. City of Sheffield Lake* (Mar. 7, 1996), 8th Dist. No. 69302, both support its position. However, both cases are clearly distinguishable.

Fuller was a CMHA employee who was arrested after entering a vacant CMHA property while he was off duty. Fuller filed suit against CMHA for negligent hiring, retention, and intentional infliction of emotional distress. *Fuller* is clearly not relevant to our discussion in the instant case because Fuller was off duty at the time of his arrest; whereas here, an employee meeting was specifically scheduled for the sole purpose of arresting Sampson and several other coworkers, in front of several hundred employees, with the specific purpose of setting an example. Sampson's arrest was clearly within the purview of his employment, while Fuller's was not. Further, *Fuller* does not even address R.C. 2744.09, which is specifically at issue in this case.

Similarly, *Inghram* is also factually distinguishable. While Inghram was working in North Royalton, he locked himself out of his vehicle. He contacted the North Royalton Police Department for assistance. When the officers arrived, they mistakenly arrested Inghram believing a warrant was issued out of Sheffield Lake for his arrest. Later, it was discovered that the arrest warrant was for another individual of the same name. Inghram sued both North Royalton and Sheffield Lake for libel, slander, malicious prosecution, false arrest, abuse of process, and

negligence. *Inghram* is clearly not relevant to our discussion here because, even though *Inghram* was arrested while he was working, his claims were not against his employer. *Inghram* never addressed R.C. 2744.09, which is our focus in the instant case.

The first case in which this court specifically addressed whether intentional torts can arise out of an employment relationship pursuant to R.C. 2744.09(B) was *Ventura v. Independence* (May 7, 1998), 8th Dist. No. 72526. *Ventura* was employed by the city of Independence as a maintenance worker and had several medical conditions that restricted his ability to perform certain tasks at work. *Ventura* sued the city alleging that the city failed to accommodate his medical conditions and was assigned tasks that exacerbated his conditions. *Ventura* alleged that this conduct by the city constituted an intentional tort. Although the *Ventura* court ultimately concluded that the intentional tort claims did not arise out of the employment relationship, it did not conduct a full analysis of R.C. 2744.09(B) and concluded that R.C. 2744.09(B) did not apply to the specific facts of the case.

Several subsequent cases from this court relied on *Ventura* to bar employees from recovering against political subdivisions for intentional torts. However, such reasoning was misplaced in light of the language used in *Ventura*, which limited

its holding to the facts of that case. In *Nielsen-Mayer v. CMHA* (Sept. 2, 1999), 8th Dist. No. 75969, this court stated:

**“This appellate court has recently determined that intentional torts do not arise out of the employment relationship and that the sovereign immunity codified in R.C. 2744, et seq., applies to immunize the political subdivision from such intentional tort claims.”**

In support of this broad proposition of law, *Nielsen-Mayer* cited to *Ventura*. However, *Ventura* articulated a narrow holding that the plaintiff could not recover for his intentional torts in that case because R.C. 2744.09(B) did not apply to those specific facts. *Ventura* did not create a broad proposition of law as stated in *Nielsen-Mayer*. Similarly, in *Chase v. Brooklyn City School Dist.* (Jan. 16, 2001), 8th Dist. No. 77263, this court relied on an overly broad interpretation of *Ventura* and concluded that intentional torts could not arise out of the employment relationship pursuant to R.C. 2744.09(B).

In our more recently decided case, *Young v. Genie Industries*, 8th Dist. No. 89665, 2008-Ohio-929, this court reiterated that R.C. 2744.09(B) did not allow an employee to recover for an intentional tort against a political subdivision. Specifically, *Young* relied on *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, which held that intentional torts do not arise out of the employment relationship, and that such conduct takes place outside of the employment relationship. We find this court's reliance on *Brady* in this context

to be misplaced. *Brady* was a workers' compensation case and never dealt with sovereign immunity or R.C. 2744.09(B).

In *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 1994-Ohio-394, 639 N.E.2d 105, the Ohio Supreme Court recognized that political subdivisions are afforded broad immunity pursuant to Chapter 2744. However, *Wilson* never addressed the specific exceptions to immunity outlined in R.C. 2744.09, and we are unaware of any Ohio Supreme Court decision that has concluded that intentional torts cannot arise out of the employment relationship with respect to R.C. 2744.09(B).

Therefore, we conclude that our reasoning in *Ventura* was limited to the specific facts of the case, and that *Nielsen-Mayer* and *Chase* were erroneously decided because they applied a fact specific holding to create a broad proposition of law, prohibiting recovery under R.C. 2744.09(B) for intentional torts under any circumstance. Further, we conclude that the reasoning in *Brady*, which held that intentional torts do not arise out of the employment relationship, is inapplicable because *Brady* dealt solely with workers' compensation law. Consequently, the reasoning in *Young* was misplaced because it relied exclusively on *Brady*, which is inapplicable.

As we have determined that intentional torts can arise out of the employment relationship with respect to R.C. 2744.09(B), we must now look to the

totality of the circumstances and determine if Sampson's claims actually did arise out of the employment relationship. *Ruckman v. Cubby Drilling Inc.*, 81 Ohio St.3d 117, 1998-Ohio-455, 689 N.E.2d 917, citing *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277, 551 N.E.2d 1271. In order for a claim to arise out of one's employment, there must be a causal relationship between the employment and the claim. *Keith v. Chrysler, L.L.C.*, 6th Dist. No. L-09-1126, 2009-Ohio-6974, at ¶16, citing *Aiken v. Indus. Comm.* (1944), 143 Ohio St. 113, 117, 53 N.E.2d 1018. A direct causal connection is not required, an indirect causal relationship is sufficient. *Keith* at ¶17, citing *Merz v. Indus. Comm. of Ohio* (1938), 134 Ohio St. 36, 15 N.E.2d 632.

The facts of this case clearly indicate that Sampson's claims stem from his employment with CMHA. Sampson, along with approximately 200 other coworkers were specifically told to report to the Lakeside Avenue warehouse for their work assignment. The meeting occurred during the workday, and the arrested employees were handcuffed and searched in front of their fellow employees. The facts indicate that CMHA intended this meeting to serve as an example to other employees, demonstrating that if caught stealing you too will be placed on display and arrested, searched, handcuffed, and taken away in a patrol car before hundreds of your fellow coworkers. Director Phillips acknowledged that this served as an example to other CMHA employees, and Sampson maintains

that while the employees were being arrested, Director Phillips announced to the remainder of the employees that this should serve as an example to them. (Deposition of Phillips at 105; deposition of Sampson at 17.) Sampson's claims clearly arose out of his employment when he was arrested during the workday in front of all of his fellow coworkers, rather than being arrested at home.

Further, the investigation into the alleged gasoline theft by the plumbers was considerably shorter than other investigations into employee theft. Director Phillips stated that the investigation into theft by CMHA painters, who were arrested on the same day as Sampson and the other plumbers, lasted approximately nine months, as opposed to the mere several weeks of investigation conducted regarding the alleged plumber theft. (Deposition of Phillips at 109.)

Consequently, we find that R.C. 2744.09(B) bars CMHA from raising immunity pursuant to Chapter 2744. Therefore, summary judgment was properly denied with respect to all claims asserted against CMHA.

This assignment of error is overruled.

#### ASSIGNMENT OF ERROR NUMBER TWO

**"THE TRIAL COURT ERRED, AS A MATTER OF LAW, TO THE PREJUDICE OF ANTHONY JACKSON, GEORGE PHILLIPS, AND RONALD MORENZ IN NOT DISMISSING ALL CLAIMS AGAINST THEM ON SUMMARY JUDGMENT PURSUANT TO OHIO REVISED CODE CHAPTER 2744 BECAUSE THERE IS NO EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT TO EXCEPT THE INDIVIDUAL DEFENDANTS FROM IMMUNITY FOR INTENTIONAL**

**TORTS AND INDIVIDUAL DEFENDANTS ARE IMMUNE  
FROM NEGLIGENCE CLAIMS AS A MATTER OF LAW.”**

Director Phillips, Chief Jackson, and Lieutenant Morenz argue that they are entitled to immunity against all of Sampson’s claims. After a review of the record and applicable case law, we disagree.

Sampson does not allege that R.C. 2744.09(B) applies to bar the defendants from attempting to raise immunity. By its express language, R.C. 2744.09(B), as discussed in the first assignment of error, only applies to political subdivisions, and not their employees. As all three individual appellants have asserted immunity pursuant to Chapter 2744, we must conduct a two-tiered immunity analysis to determine if summary judgment was appropriately denied. *State ex rel. Conroy v. Williams*, 7th Dist. No. 08 MA 60, 2009-Ohio-6040, at ¶17, citing *Knox v. Hetrick*, 8th Dist. No. 91102, 2009-Ohio-1359, ¶15.

First, it is presumed that employees of a political subdivision are immune from suit. There is no dispute that Director Phillips, Chief Jackson, and Lieutenant Morenz are all employed by CMHA, and that CMHA is a political subdivision. *Fuller* at ¶9, citing *Moore v. Lorain Metro. Hous. Auth.*, 121 Ohio St.3d 455, 2009-Ohio-1250, 905 N.E.2d 606.

Secondly, we must analyze whether any of the exceptions outlined in R.C. 2744.03(A)(6) apply to bar immunity. *State ex rel. Conroy* at ¶20, citing *Knox*.

Sampson specifically argues that R.C. 2744.03(A)(6)(b) applies, which states in pertinent part, "[t]he employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner."

Sampson presented evidence that the relatively short investigation consisted merely of looking at employee time cards and interviewing one car dealership regarding gas tank capacity. (Deposition of Morenz at 75-80.) Director Phillips, Chief Jackson, and Lieutenant Morenz orchestrated the plan to arrest 13 employees at the warehouse in front of approximately 200 fellow coworkers. They claim this was to protect the arrested employees from being arrested in front of their children. However, comments made in the subsequent press release indicate that the real motivation for arresting the employees at the warehouse was to use the arrested employees as an example for all CMHA employees that they will be arrested if they steal from CMHA. Chief Jackson helped draft the press release. (Deposition of Phillips at 75.)

In January 2005, Lieutenant Morenz drafted a report detailing problems with the investigation, such as not all CMHA vehicles contained gas cards, employees shared their individual PIN numbers, and not all employees that needed to use the gas cards were issued PIN numbers. In March 2005, Lieutenant Morenz even noted that Sampson's explanation that he shared his PIN number

was plausible. (Deposition of Morenz at 145, 217-220.) Charges were ultimately dismissed against all of the plumbers.

Factual determinations as to whether conduct has risen to the level of wanton or reckless is normally reserved for trial. *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 356, 1994-Ohio-368, 639 N.E.2d 31, citing *Matkovich v. Penn Cent. Transp. Co.* (1982), 69 Ohio St.2d 210, 431 N.E.2d 652. Therefore, we find that Sampson has presented evidence that creates a genuine issue of material fact as to whether the conduct of Director Phillips, Chief Jackson, and Lieutenant Morenz was wanton or reckless pursuant to R.C. 2744.03.

Consequently, summary judgment was appropriately denied with respect to the claims against the individual employees. This assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Mary Eileen Kilbane  
MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, A.J.,  
PATRICIA A. BLACKMON, J.,  
LARRY A. JONES, J., and  
JAMES J. SWEENEY, J., CONCUR;

MARY J. BOYLE, J., CONCURS IN JUDGMENT ONLY;

KENNETH A. ROCCO, J., CONCURS IN PART; DISSENTS IN PART (SEE SEPARATE OPINION);

FRANK D. CELEBREZZE, JR., J., CONCURS WITH SEPARATE OPINION OF JUDGE KENNETH A. ROCCO;

ANN DYKE, J., CONCURS WITH SEPARATE OPINION OF JUDGE KENNETH A. ROCCO;

COLLEEN CONWAY COONEY, J., CONCURS IN PART DISSENTS IN PART (SEE SEPARATE OPINION); CONCURS WITH SEPARATE OPINION OF JUDGE KENNETH A. ROCCO AS TO THE FIRST ASSIGNMENT OF ERROR;

MELODY J. STEWART, J., CONCURS WITH SEPARATE OPINION OF JUDGE COLLEEN CONWAY COONEY;

CHRISTINE T. McMONAGLE, J., RECUSED.

KENNETH A. ROCCO, J., CONCURRING IN PART, DISSENTING IN PART:

As the writer of *Ventura v. Independence* (May 7, 1998), Cuyahoga App. No. 72526, I find myself constrained respectfully to dissent from the majority opinion's analysis and decision with respect to the first assignment of error.

Contrary to the majority opinion's characterization, *Ventura* did not indicate "its holding was limited to the facts of that case." The *Ventura* decision stated,

"As he did in the trial court, appellant argues his claims for intentional tort and intentional infliction of emotional distress arise out of his employment relationship with the city; thus, he contends immunity does not apply. However, the court in *Ellithorp v. Barberton City School Dist. Bd. of Edn.* (July 9, 1997), Summit App. No. 18029, unreported, recently stated as follows:

"Because Section 2744.02(B) includes no specific exceptions for intentional torts, courts have consistently held that political subdivisions are immune from intentional tort claims. See, e.g., *Wilson [v. Stark Cty. Dept. of Human Serv.]* (1994), 70 Ohio St.3d 450 at 452-453, 639 N.E.2d 105] (claims for fraud and intentional infliction of emotional distress); *Farra v. Dayton* (1989), 62 Ohio App.3d 487, 576 N.E.2d 807 (claim for intentional interference with business interests); *Monesky v. Wadsworth* (Apr. 3, 1996), 1996 Ohio App. LEXIS 1402,

Medina App. No. 2478-M, unreported (claims for trespass and demolition of a building). \*\*\*

"Ms. Ellithorp also argued in the trial court, and has argued on appeal, that Section 2744.09(B) of the Ohio Revised Code provides an exception to sovereign immunity applicable to this case. That Section provides that Chapter 2744 immunity does not apply to civil actions brought by an employee against a political subdivision "relative to any matter that arises out of the employment relationship between the employee and the political subdivision [.]” The school board has asserted, and this Court agrees, that Section 2744.09(B) is inapplicable to the facts of this case. *An employer’s intentional tort against an employee does not arise out of the employment relationship, but occurs outside of the scope of employment. Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, paragraph one of the syllabus. (Emphasis added.) See, also, *Nungester v. Cincinnati* (1995), 100 Ohio App.3d 561 at 567, 654 N.E.2d 423; *Brannon v. Troutman*, supra; *Marsh v. Oney* (Mar. 1, 1993), Butler App. No. CA92-09-165, unreported.’

"This court finds such reasoning persuasive. To paraphrase *Wilson*, to allow such claims as appellant’s would frustrate the purpose of both Chapter 2744 and laws providing for collective bargaining and workers’ compensation;

consequently, R.C. 2744.09(B) does not create an exception to immunity for the political subdivision on the facts of this case.” (Emphasis added.)

I note further that the proposition of law *Ventura* set forth has been followed, not just, as acknowledged by the majority opinion, in *Nielsen-Mayer v. Cuyahoga Metro. Hous. Auth.* (Sept. 2, 1999), Cuyahoga App. No. 75969, and *Chase v. Brooklyn City School Dist.* (2001), 141 Ohio App.3d 9, 749 N.E.2d 798, but in no less than ten additional subsequent cases, many from other Ohio appellate districts. *Lyren v. Wellington* (Sept. 1, 1999), Lorain App. No. 98CA007114 (electrical lineman electrocuted by village power lines); *Abdalla v. Olexia* (Oct. 6, 1999), Jefferson App. No. 97-JE-43 (sheriff acquitted of federal charges denied costs of legal representation by county); *Engleman v. Cincinnati Bd. of Edn.* (June 22, 2001), Hamilton App. No. C-000597 (teacher injured by student with known violent tendencies); *Coolidge v. Riegle*, Hancock App. No. 5-02-59, 2004-Ohio-347, appeal not allowed, 102 Ohio St.3d 1531, 2004-Ohio-3580, 811 N.E.2d 1150; *Fabian v. Steubenville* (Sept. 28, 2001), Jefferson App. No. 00 JE 33 (wastewater treatment worker injured by chlorine gas); *Terry v. Ottawa Cty. Bd. of Mental Retardation and Dev. Disabilities*, 151 Ohio App.3d 234, 2002-Ohio-7299, 783 N.E.2d 959 (workers injured by toxic substances); *Fleming v. Ashtabula Area City School Bd. of Edn.*, Ashtabula App. No. 2006-A-0030, 2008-Ohio-347 (racial-minority teacher’s contract not renewed);

*Zieber v. Heffelfinger*, Richland App. No. 08CA0042, 2009-Ohio-1227 (county treasurer's clerk assaulted at work by county auditor's clerk); and, more recently, *Jopek v. Cleveland*, Cuyahoga App. No. 93793, 2010-Ohio-2356 (police officer accused of using unjustified force) and *Grassia v. Cleveland*, Cuyahoga App. No. 93647, 2010-Ohio-2483 (city worker contracted Legionnaire's disease).

The majority opinion thus overlooks the fact that *Ventura* has been cited numerous times, by this court as well as by other appellate districts, as authority for the position that R.C. 2744.09(B) is inapplicable to actions that allege intentional tort by political subdivision employees against their employer. Moreover, it is not the only case that so holds. See, e.g., *Schmitz v. Xenia Bd. of Edn.*, Greene App. No. 2002-CA-69, 2003-Ohio-213; *Sabulsky v. Trumbull Cty.*, Trumbull App. No. 2001-T-0084, 2002-Ohio-7275, appeal not allowed, 98 Ohio St.3d 1567, 2003-Ohio-2242, 787 N.E.2d 1231.

Clearly, the greater weight of authority does not support the majority opinion's disposition of the first assignment of error in this case. It is significant to me that, as demonstrated by *Coolidge* and *Sabulsky*, the Ohio Supreme Court has had the opportunity, but has declined, to overrule appellate decisions that hold that, in the context of employer intentional tort claims, R.C. 2744.09(B) does not abrogate sovereign immunity. See, e.g., *Chase v. Brooklyn City School Dist.* (2001), 91 Ohio St.3d 1529, 747 N.E.2d 253.

Therefore, I dissent from that portion of the opinion. I agree, however, with the majority opinion's disposition of the second assignment of error.

Appellees may still pursue their claims against the individual appellants. Moreover, as pointed out in the majority opinion, and as contemplated by *Ellithorpe* in its citation to *Wilson*, appellees utilized remedies available to them under the collective bargaining agreement with the CMHA prior to filing this action. Thus, the appellees are not left without recourse in righting the perceived wrongs done to them.

COLLEEN CONWAY COONEY, J., CONCURRING IN PART, DISSENTING IN PART:

I concur in the judgment to affirm the trial court, but I respectfully dissent from the majority's overbroad holding that seeks to overturn well reasoned precedent involving classic employer intentional tort cases.

Sampson's claims do not involve a classic employer intentional tort. Rather, he claimed that defendants acted maliciously, in bad faith, and in a wanton and reckless manner. His claims clearly arose out of his employment relationship — he was given a gasoline credit card to put gas in his employer's vehicles. He pursued arbitration through his collective bargaining agreement and was reinstated to his position — further evidence that his claims arose out of his

employment relationship. Therefore, CMHA is barred from asserting immunity under R.C. 2744.09(B).

However, the majority goes well beyond the facts presented to overrule our prior decisions that actually involved employer intentional torts.<sup>1</sup> Therefore, I concur in the judgment to affirm but I dissent from that portion of the majority opinion overruling our well reasoned precedent.

The reason Sampson alleged that defendants acted maliciously, in bad faith, and in a wanton and reckless manner was to strip them of their immunity pursuant to R.C. 2744.03(B)(6). The trial court correctly found issues of fact existed on this issue and denied summary judgment. But the fact that no deliberate or intentional act was alleged by Sampson brings his claim outside the parameters of an employer intentional tort.

As the Ohio Supreme Court recently noted: *Fyffe's* common-law test for employer intentional torts applied until the General Assembly enacted H.B. 498, effective April 7, 2005, R.C. 2745.01. *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, 927 N.E.2d 1066, ¶33. "Paragraph two of the syllabus [in *Fyffe v. Jenos's Inc.* (1991), 59 Ohio St.3d 115, 570 N.E.2d 1108,] states:

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<sup>1</sup>It is significant that in one of our recent decisions, the Ohio Supreme Court had the opportunity to review our decision applying sovereign immunity in the context of employer intentional tort and declined jurisdiction. *Magda v. Greater Cleveland Regional Transit Auth.*, Cuyahoga App. No. 92570, 2009-Ohio-6219, appeal not allowed, 124 Ohio St.3d 1510, 2010-Ohio-799.

"To establish an intentional tort of an employer, proof beyond that required to prove negligence and beyond that to prove recklessness must be established. Where the employer acts despite his knowledge of some risk, his conduct may be negligence. As the probability increases that particular consequences may follow, then the employer's conduct may be characterized as recklessness. As the probability that the consequences will follow further increases, and the employer knows that injuries to employees are certain or substantially certain to result from the process, procedure or condition and he still proceeds, he is treated by the law as if he had in fact desired to produce the result. However, the mere knowledge and appreciation of a risk — something short of substantial certainty — is not intent. (*Van Fossen v. Babcock & Wilcox Co.* [1988], 36 Ohio St.3d 100, 522 N.E.2d 489, paragraph six of the syllabus, modified as set forth above and explained.)" *Kaminski* at ¶32.

Sampson's allegations do not rise to the level of an employer intentional tort and therefore, the majority goes far beyond the issue presented to overrule this court's precedent that involved claims specifically described as employer intentional tort. On this basis, I agree with Judge Rocco's separate opinion.

I find the following reasoning of the Fourth District Court of Appeals particularly instructive on this very subject. The court in *Nagel v. Horner*, 162 Ohio App.3d 221, 2005-Ohio-3574, 833 N.E.2d 300, ¶16-20, stated in pertinent part:

"We acknowledge that Ohio courts consistently have held that under the provisions of R.C. Chapter 2744, political subdivisions retain their cloak of immunity from lawsuits for intentional-tort claims. See *Wilson v. Stark Cty. Dept. of Human Serv.* (1994), 70 Ohio St.3d 450 at 452, 639 N.E.2d 105, where in a suit by a private citizen the court stated that R.C. 2744.02(B) contains no exceptions to immunity for torts of fraud and intentional infliction of emotional distress. We also acknowledge that in the workers' compensation context, the Supreme Court of Ohio has held that an employer's intentional tort against an employee occurs outside the scope of the employment relationship. *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624, 576 N.E.2d 722, paragraph one of the syllabus.

Consequently, Ohio appellate courts have held that R.C. 2744.09 has no application to employer-intentional-tort claims. See *Thayer v. W. Carrollton Bd. of Edn.*, Montgomery App. No. 20063, 2004-Ohio-3921; *Terry v. Ottawa Co. Bd. of Mental Retardation & Developmental Disabilities* (2002), 151 Ohio App.3d 234, 783 N.E.2d 959; and *Chase v. Brooklyn City School Dist.* (2001), 141 Ohio App.3d 9, 749 N.E.2d 798, and the cases they cite.

"But in *Gessner v. Union*, 159 Ohio App.3d 43, 2004-Ohio-5770, 823 N.E.2d 1, the Second District held that age-discrimination and wrongful-discharge claims arose out of the employment relationship, despite the defendant's claim that age discrimination is an intentional tort. In reaching its decision, the court noted that '[t]he case law on this issue is sparse, but that is not surprising in view of such an obvious point.' *Id.* at ¶31. *Gessner* further observed that no other Ohio cases precluded applying R.C. 2744.09(B) when civil rights violations occur in the employment context. 'In fact, suit appears to be routinely permitted against political subdivisions in such situations.' *Id.* at ¶47.

"Like our colleagues in *Gessner*, we are not persuaded that the legislature intended to engraft the Supreme Court's interpretation of the workers' compensation scheme onto its general statutory provisions for political-subdivision immunity. Because employer intentional torts are not a natural risk of employment, the Supreme Court concluded that they occur outside of the employment relationship in the workers' compensation context. See *Blankenship v. Cincinnati Milacron Chem., Inc.* (1982), 69 Ohio St.2d 608, 613, 433 N.E.2d 572. \* \* \*

"We continue to believe claims that are causally connected to an individual's employment fit into the category of actions that are 'relative to any matter that arises out of the employment relationship.' \* \* \* More recently, the Supreme Court of Ohio went so far as to summarily state that immunity is not available to a political subdivision in an employee's claim for unlawful discrimination. The court cited R.C. 2744.09(B) and (C). *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm.* (1995), 74 Ohio St.3d 120, 123, 656 N.E.2d 684. And while *Wilson v. Stark Cty. Dept. of Human Services*, *supra*, does indeed indicate that R.C. 2744.02(B) has no exceptions to immunity for fraud and intentional infliction of emotional distress, that case involved a suit by a citizen who was not a public employee. Thus, R.C. 2744.09(B) was not applicable.

"Because they are causally connected to Nagel's employment with the appellants, the retaliation and hostile-work-environment claims arise out of the

employment relationship and in this case are based upon what Nagel asserts are violations of his civil rights. Therefore, his claims fall within the purview of R.C. 2744.09, which means that the statutory grant of immunity found in R.C. Chapter 2744 does not apply. Thus, we conclude that the trial court correctly decided that appellants are not entitled to summary judgment on these claims."

Likewise, because Sampson's claims are causally connected to his employment and do not involve the workers' compensation context, the trial court correctly decided that appellants are not entitled to immunity on these claims.

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 93441

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**DARRELL SAMPSON**

PLAINTIFF-APPELLEE

vs.

**CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-600324

**BEFORE:** Kilbane, P.J., Blackmon, J., and Sweeney, J.

**RELEASED:** March 25, 2010

**JOURNALIZED:**

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ANNOUNCEMENT OF DECISION  
PER APP.R. 22(B) AND 26(A)  
RECEIVED

MAR 25 2010

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY \_\_\_\_\_ DEP.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

Appellee, Darrell Sampson, a Cuyahoga Metropolitan Housing Authority ("CMHA") plumber, brought suit against CMHA and three of its employees, George Phillips, Anthony Jackson, and Ronald Morenz ("appellants"), alleging that CMHA negligently accused and arrested Sampson for theft. Appellants filed a motion for summary judgment with the trial court alleging they were immune from suit, which the trial court denied. After a review of the record and applicable law, we affirm.

The following facts give rise to this appeal.

Sampson was raised in a CHMA housing development. In 1988, at age 22, CMHA hired him as a groundskeeper. In 2000, Sampson was promoted to the position of Serviceman V Plumber. CMHA plumbers work in the Property Maintenance Department, reporting for work each day at the plumbers' shop, which is located at 4315 Quincy Avenue, Cleveland, Ohio. At the plumbers' shop, they punch in for work, pick up their tools, and receive their work assignments for the day.

The plumbers service CMHA properties in Cleveland as well as the surrounding suburbs, and CMHA provides the plumbers with numerous vehicles to drive to these locations. Gasoline credit cards were assigned to CMHA vehicles

so that employees could purchase gasoline for the vehicles using their individual employee PIN numbers provided by CMHA.

On July 20, 2004, CHMA received an anonymous tip on the CMHA "tips hotline," accusing plumber Alvin Roan ("Roan") of using a CMHA gasoline credit card to purchase gasoline for his personal vehicle. Lieutenant Ronald Morenz ("Lieutenant Morenz") worked at the CMHA Police Detective Bureau and was assigned to investigate the allegations against Roan under the supervision of CMHA Police Chief, Anthony Jackson ("Chief Jackson"), who worked under the direction of CMHA Executive Director, George Phillips ("Director Phillips").

Lieutenant Morenz investigated Roan and the other plumbers for approximately four weeks. On August 27, 2004, Director Phillips, along with Chief Jackson, called a special meeting of CMHA employees. Director Phillips, Chief Jackson, and Lieutenant Morenz, all orchestrated a plan to arrest numerous plumbers as well as painters (the subjects of a separate investigation) at the employee meeting. When Director Phillips had worked at the Chicago Housing Authority, he had witnessed a very similar mass arrest, where numerous Chicago Housing Authority employees were arrested by police at a warehouse. (Deposition of Phillips 75.) Director Phillips determined that arresting the employees in front of 200 of their fellow coworkers would save them the embarrassment of being arrested at home in front of their children.

(Deposition of Phillips 104.) Director Phillips and Chief Jackson issued a press release detailing the agenda for a press conference to be held on August 31, 2004, at 10:30 a.m., immediately following the employee meeting regarding employee theft and arrests.

On August 30, 2004, the plumbers were told not to follow their daily routine of reporting to the plumbers' shop on Quincy Avenue the following morning, but rather to report for work directly to the CMHA Warehouse located at 4700 Lakeside Avenue, Cleveland, Ohio for an employee meeting.

On August 31, 2004, approximately 200 CMHA employees gathered at the CMHA Warehouse. Sergeant Ray Morgan ("Sergeant Morgan") of the CMHA Community Policing Unit announced the names of 13 CMHA employees, including Sampson. Sergeant Morgan then announced that the 13 individuals (six plumbers and seven painters) were under arrest for theft. The men were handcuffed and searched in front of their fellow CMHA employees. The arrested employees were then taken behind a partition where they were photographed, and then led outside into waiting patrol cars. Television news cameras were present outside and photographed the arrested employees, video of which later aired on local news broadcasts depicting the identity of those arrested. Appellants maintain that they did not contact the media prior to the arrests.

Arrested employees spent the night in jail before being released the following day without charges. All arrested employees were placed on administrative leave from their positions with CMHA.

On October 7, 2004, Sampson and several other plumbers were indicted on theft, misuse of credit cards, and theft in office. The State contended that Sampson had misused the gasoline credit cards provided in the CMHA vehicles. On February 2, 2005, nearly five months after his arrest at the employee meeting, the State dismissed the charges.

On November 22, 2005, an arbitration hearing was held to determine whether Sampson should be reinstated to his position with CMHA. Ultimately, the arbitrator concluded that CMHA had failed to present any evidence of gasoline theft and ordered that Sampson be reinstated. The arbitrator stated in pertinent part:

**"There were other failures in Lt. Morenz's investigation. Lt. Morenz testified that he did not check to see if each vehicle in the Property Maintenance Department had its own gas card until September 2004. At no time did he talk to Grievant or any of his co-workers. \* \* \* In the face of the evidence, the arbitrator finds that the preponderance of the evidence shows no theft of gasoline at all, much less any evidence that the grievant was guilty of such theft."**

In March 2006, Sampson returned to work for CMHA. According to Sampson, the position he returned to involved different duties than his position prior to the arrest. Further, Sampson claims that he was no longer permitted to

retrieve his own equipment or drive CMHA vehicles. Sampson was subsequently diagnosed with posttraumatic stress disorder.

On August 31, 2006, Sampson filed suit against appellants, alleging intentional infliction of emotional distress, negligent infliction of emotional distress, and abuse of process. Sampson later amended his complaint to include negligent misidentification.

On November 3, 2006, appellants filed a motion for judgment on the pleadings with respect to the negligent infliction of emotional distress. On November 17, 2006, after receiving one extension of time, Sampson filed his brief in opposition. On December 5, 2006, appellants filed their reply brief. On October 2, 2007, the trial court granted the motion, dismissing the negligent infliction of emotional distress claim but leaving all other claims pending.

On December 12, 2008, appellants filed a motion for summary judgment on all remaining claims, alleging sovereign immunity. On January 9, 2009, Sampson filed his brief in opposition. On January 13, 2009, appellants filed their reply brief.

On June 4, 2009, the trial court denied the motion for summary judgment, finding that a genuine issue of material fact still existed as to whether appellants' conduct was wanton or reckless.

Appellants filed the instant appeal pursuant to R.C. 2744.02, which allows political subdivisions and employees of political subdivisions to immediately appeal an order that denies immunity, asserting two assignments of error.

**ASSIGNMENT OF ERROR NUMBER ONE**

**"THE TRIAL COURT ERRED AS A MATTER OF LAW, IN THE PREJUDICE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY IN NOT DISMISSING ALL CLAIMS AGAINST IT ON SUMMARY JUDGMENT BECAUSE POLITICAL SUBDIVISIONS ARE ABSOLUTELY IMMUNE FROM INTENTIONAL TORT CLAIMS PURSUANT TO OHIO REVISED CODE 2744 AND NO EXCEPTION TO IMMUNITY APPLIES TO PLAINTIFF'S NEGLIGENT MISIDENTIFICATION CLAIM."**

CMHA argues that pursuant to R.C. 2744.02, it is immune from liability for the all the claims alleged in Sampson's complaint.

**Summary Judgment Standard**

In Ohio, appellate review of summary judgment is de novo. *Comer v. Risko* 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712. "Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate." *Mobsey v. Sanders*, 8th Dist. No. 92605, 2009-Ohio-6459, at ¶11, citing *Hollins v. Schaffer*, 182 Ohio App.3d 282, 286, 2009-Ohio-2136, 912 N.E.2d 637.

The Ohio Supreme Court stated the appropriate test in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 1998-Ohio-389, 696 N.E.2d 201, as follows:

"Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor." See, also, *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 374, 2005-Ohio-2163, 826 N.E.2d 832, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

#### Analysis

Political subdivisions are immune from suit, with the exception of limited situations provided for by statute. *Campolieti v. Cleveland*, 8th Dist. No. 92238, 2009-Ohio-5224, 921 N.E.2d 286, at ¶32, citing *Hodge v. Cleveland* (Oct. 22, 1998), 8th Dist. No. 72283. Whether a political subdivision is immune from liability is a question of law that should be resolved by the trial court, preferably on a motion for summary judgment. *Sabulsky v. Trumbull Cty.*, Trumbull App. No. 2001-T-0084, 2002-Ohio-7275, at ¶7, citing *Conley v. Shearer* (1992), 64 Ohio St.3d 284, 595 N.E.2d 862.

In the motion for summary judgment, CMHA argued that it was entitled to immunity from suit pursuant to R.C. 2744.02, which states:

**"[A] political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political**

subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.”

In response, Sampson maintains that R.C. 2744.02 is inapplicable pursuant to an express exception outlined in R.C. 2744.09(B), which states that Ohio Revised Code Chapter 2744 shall not apply to “[c]ivil actions by an employee \* \* \* against his political subdivision relative to any matter that *arises out of the employment* relationship between the employee and the political subdivision.” (Emphasis added.)

This court recently addressed the applicability of a similar statutory provision, R.C. 2744.09(C), with respect to intentional tort claims in *Magda v. Greater Cleveland Regional Transit Auth.*, 8th Dist. No. 92570, 2009-Ohio-6219. R.C. 2744.09(C) states that Chapter 2744 of the Ohio Revised Code shall not apply to cases pertaining to claims brought by an employee with respect to “wages, hours, conditions or other terms of employment.” In *Magda*, this court concluded that R.C. 2744.09(C) does not apply to intentional tort claims because intentional torts are actions that occur *outside* of the employment relationship. *Id.* at ¶22.

However, *Magda* is distinguishable from the instant case because here, R.C. 2744.09(B), rather than R.C. 2744.09(C), applies. R.C. 2744.09(B) states that Chapter 2744 does not apply to “any matter that arises out of the employment relationship,” as opposed to the more specific language used in R.C. 2744.09(C) that discusses claims specifically relating to wages, hours, and employment

conditions. Intentional tort claims could obviously not arise out of such a specific provision. R.C. 2744.09(B) is considerably more broad, encompassing *any matter* that arises out of the employment relationship. Therefore, we find that R.C. 2744.09(B) bars political subdivisions from asserting immunity with respect to both intentional tort and negligence claims when such claims arise out of the employment relationship.

When determining whether an injury arose out of the employment relationship, we must look to the totality of the circumstances. *Ruckman v. Cubby Drilling Inc.*, 81 Ohio St.3d 117, 1998-Ohio-455, 689 N.E.2d 917, citing *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277, 551 N.E.2d 1271. In order for a claim to arise out of one's employment, there must be a causal relationship between the employment and the claim. *Keith v. Chrysler, L.L.C.*, 6th Dist. No. L-09-1126, 2009-Ohio-6974, at ¶16, citing *Aiken v. Indus. Comm.* (1944), 143 Ohio St. 113, 117, 53 N.E.2d 1018. A direct causal connection is not required, an indirect causal relationship is sufficient. *Keith* at ¶17, citing *Merz v. Indus. Comm. of Ohio* (1938), 134 Ohio St. 36, 15 N.E.2d 632.

The facts of this case clearly indicate that Sampson's claims stem from his employment with CMHA. Sampson, along with approximately 200 other coworkers were specifically told to report to the Lakeside Avenue warehouse for their work assignment. The meeting occurred during the workday, and the

arrested employees were handcuffed and searched in front of their fellow employees. The facts indicate that CMHA intended this meeting to serve as an example to other employees, demonstrating that if caught stealing you too will be placed on display and arrested, searched, handcuffed, and taken away in a patrol car before hundreds of your fellow coworkers. Director Phillips acknowledged that this served as an example to other CMHA employees, and Sampson maintains that while the employees were being arrested, Director Phillips announced to the remainder of the employees that this should serve as an example to them. (Deposition of Phillips 105; Deposition of Sampson 17.) Sampson's claims clearly arose out of his employment when he was arrested during the workday in front of all of his fellow coworkers, rather than being arrested at home.

Further, the investigation into the alleged gasoline theft by the plumbers was considerably shorter than other investigations into employee theft. Director Phillips stated that the investigation into theft by CMHA painters, who were arrested on the same day as Sampson and the other plumbers, lasted approximately nine months, as opposed to the mere several weeks of investigation conducted regarding the alleged plumber theft. (Deposition of Phillips 109.)

Consequently, we find that R.C. 2744.09(B) bars CMHA from raising immunity pursuant to Chapter 2744. Therefore, summary judgment was properly denied with respect to all claims asserted against CMHA.

This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

**“THE TRIAL COURT ERRED, AS A MATTER OF LAW, TO THE PREJUDICE OF ANTHONY JACKSON, GEORGE PHILLIPS, AND RONALD MORENZ IN NOT DISMISSING ALL CLAIMS AGAINST THEM ON SUMMARY JUDGMENT PURSUANT TO OHIO REVISED CODE CHAPTER 2744 BECAUSE THERE IS NO EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT TO EXCEPT THE INDIVIDUAL DEFENDANTS FROM IMMUNITY FOR INTENTIONAL TORTS AND INDIVIDUAL DEFENDANTS ARE IMMUNE FROM NEGLIGENCE CLAIMS AS A MATTER OF LAW.”**

Director Phillips, Chief Jackson, and Lieutenant Morenz argue that they are entitled to immunity against all of Sampson’s claims. After a review of the record and applicable case law, we disagree.

Plaintiff does not allege that R.C. 2744.09(B) applies to bar the defendants from attempting to raise immunity. By its express language, R.C. 2744.09(B), as discussed in the first assignment of error, only applies to political subdivisions, and not their employees. As all three individual defendants have asserted immunity pursuant to Chapter 2744, we must conduct a two-tiered immunity analysis to determine if summary judgment was appropriately denied. *State ex rel. Conroy v. Williams*, 7th Dist. No. 08 MA 60, 2009-Ohio-6040, at ¶17, citing *Knox v. Hetrick*, 8th Dist. No. 91102, 2009-Ohio-1359, ¶15.

First, it is presumed that employees of a political subdivision are immune from suit. There is no dispute that Director Phillips, Chief Jackson, and

Lieutenant Morenz are all employed by CMHA, and that CMHA is a political subdivision. *Fuller v. Cuyahoga Metro. Hous. Auth.*, 8th Dist. No. 92270, 2009-Ohio-4716, at ¶9, citing *Moore v. Lorain Metro. Hous. Auth.*, 121 Ohio St.3d 455, 2009-Ohio-1250, 905 N.E.2d 606.

Secondly, we must analyze whether any of the exceptions outlined in R.C. 2744.03(A)(6) apply to bar immunity. *State ex rel. Conroy* at ¶20, citing *Knox*, supra. Sampson specifically argues that R.C. 2744.03(A)(6)(b) applies, which states in pertinent part, “[t]he employee’s acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner.”

Sampson presented evidence that the relatively short investigation consisted merely of looking at employee time cards and interviewing one car dealership regarding gas tank capacity. (Deposition of Morenz 75-80.) Director Phillips, Chief Jackson, and Lieutenant Morenz all orchestrated the plan to arrest 13 employees at the warehouse in front of approximately 200 fellow coworkers. They claim this was to protect the arrested employees from being arrested in front of their children. However, comments made in the subsequent press release indicate that the real motivation for arresting the employees at the warehouse was to use the arrested employees as an example for all CMHA employees that they will be arrested if they steal from CMHA. Chief Jackson helped draft the press release. (Deposition of Phillips 75.)

In January 2005, Lieutenant Morenz drafted a report detailing problems with the investigation, such as, not all CMHA vehicles contained gas cards, employees shared their individual PIN numbers, and not all employees that needed to use the gas cards were issued PIN numbers. In March 2005, Lieutenant Morenz even noted that Sampson's explanation that he shared his PIN number was plausible. (Deposition of Morenz 145, 217-220.) Charges were ultimately dismissed against all of the plumbers.

Factual determinations as to whether conduct has risen to the level of wanton or reckless is normally reserved for trial. *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 356, 1994-Ohio-368, 639 N.E.2d 31, citing *Matkovich v. Penn Cent. Transp. Co.* (1982), 69 Ohio St.2d 210, 431 N.E.2d 652. Therefore, we find that Sampson has presented evidence that creates a genuine issue of material fact as to whether the conduct of Director Phillips, Chief Jackson, and Lieutenant Morenz was wanton or reckless pursuant to R.C. 2744.03.

Consequently, summary judgment was appropriately denied with respect to the claims against the individual employees. This assignment of error is overruled.

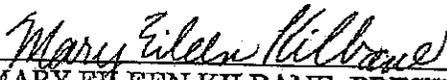
Judgment is affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

  
\_\_\_\_\_  
MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and  
JAMES J. SWEENEY, J., CONCUR



57548678



IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

DARRELL SAMPSON  
Plaintiff

CUYAHOGA METROPOLITAN HOUSING  
AUTHORITY - ET AL.  
Defendant

Case No: CV-06-600324

Judge: TIMOTHY E MCMONAGLE

JOURNAL ENTRY

DEFENDANT(S) CUYAHOGA METROPOLITAN HOUSING AUTHORITY(D1), ANTHONY JACKSON(D2), GEORGE PHILLIPS(D3) and RONALD MORENZ(D4) FILED UNDER SEAL (PURSUANT TO THE PROTECTIVE ORDER JOURNALIZED ON APRIL 21, 2008) DEFTS. MOTION FOR SUMMARY JUDGMENT JOSEPH W. BOATWRIGHT IV 0078304, FILED 12/12/2008, IS DENIED.

THIS MATTER IS BEFORE THE COURT UPON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. UPON CONSIDERATION OF ALL BRIEFS AND EVIDENCE FILED, THE COURT FINDS AS FOLLOWS.

FIRST, THE COURT FINDS THAT DEFENDANTS' CLAIM OF RES JUDICATA BASED UPON THE ARBITRATION PROCEEDINGS IS DENIED. THOSE PROCEEDINGS AND FINDINGS DO NOT BAR ANY CLAIM IN THIS CASE AS A MATTER OF LAW.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED UPON IMMUNITY IS DENIED. THE COURT FINDS THAT WHEN ALL EVIDENCE IS VIEWED IN A LIGHT MOST FAVORABLE TO THE PLAINTIFF, A MATERIAL ISSUE OF FACT EXISTS AS TO WHETHER OR NOT DEFENDANTS' ACTIONS, INCLUDING EACH INDIVIDUALLY NAMED DEFENDANT, WERE IN A WANTON AND RECKLESS MANNER. SPECIFICALLY, THE COURT CONSIDERED PLAINTIFF'S VERSION OF THE FACTS, AND IF FOUND TO BE TRUE BY A TRIER OF FACT, FINDS THAT IT COULD MEET SUCH A LEVEL AS A MATTER OF LAW. SEE KNOX V. HETRICK, ET AL., 2009 OHIO 1359. ADDITIONALLY, THE COURT FINDS THAT R.C. 2744.09(B) DOES NOT BAR PLAINTIFF'S CLAIMS BECAUSE THEY ARE ALL BASED IN TORT AND NOT "ARISE OUT OF THE EMPLOYMENT RELATIONSHIP."

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO COUNTS OF NEGLIGENT MISIDENTIFICATION, ABUSE OF PROCESS AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS DENIED. THE COURT FINDS THAT A MATERIAL ISSUE OF FACT EXISTS AS TO EACH COUNT.

*T. E. McMonagle* 6-4-09  
\_\_\_\_\_  
Judge Signature Date

RECEIVED FOR FILING

JUN 04 2009

GERALD EUBERT, CLERK  
By *[Signature]* Deputy

05/15/2009

Page 1 of 1



CASE: CV-06-600324

518111

DARELL SAMPSON  
VS.  
CUYAHOGA METROPOLITAN HOUSING AUTH

First-Class Mail  
U. S. Postage Paid  
Cleveland, OH  
Permit No. 1962

JUDGE: TIMOTHY E MCMONAGLE  
ROOM: 18B JUSTICE CENTER  
DOCKET DATE: 10/02/2007

D1 CUYAHOGA METROPOLITAN HOUSING AUTHORITY  
MOTION TO DISMISS LYNN ANN GROSS 0072617,  
FILED 11/03/2006, IS GRANTED AND DENIED IN PART.  
DEFENDANT(S) ANTHONY JACKSON(D2), GEORGE  
PHILLIPS(D3) AND RONALD MORENZ(D4) PARTIAL  
MOTION FOR JUDMGENT ON THE PLEADINGS LYNN  
ANN GROSS 0072617, FILED 11/03/2006, IS GRANTED.  
UPON CONSIDERATION OF ALL BRIEF SUBMITTED,  
THE COURT FINDS THAT COUNT 2 IS DISMISSED AS  
TO ALL DEFENDANTS. OHIO DOES NOT RECOGNIZE A  
CLAIM FOR NEGLIGENT INFLICTION OF SERIOUS  
EMOTIONAL D  
...(OSJ)

CLDLJ 10/02/2007  
NOTICE ISSUED

**FROM:**

CUYAHOGA COUNTY - COURT OF COMMON PLEAS  
GERALD E. FUERST - CLERK OF COURTS  
JUSTICE CENTER - COURT TOWER  
1200 ONTARIO ST  
CLEVELAND, OH 44113

**TO:**

LYNN ANN GROSS  
1375 E. 9TH STREET  
ONE CLEVELAND CENTER, 10TH FL.  
CLEVELAND, OH 44114



Full Text:

D1 CUYAHOGA METROPOLITAN HOUSING AUTHORITY MOTION TO DISMISS  
LYNN ANN GROSS 0072617, FILED 11/03/2006, IS GRANTED AND DENIED IN PART.  
DEFENDANT(S) ANTHONY JACKSON(D2), GEORGE PHILLIPS(D3) AND RONALD  
MORENZ(D4) PARTIAL MOTION FOR JUDMGENT ON THE PLEADINGS LYNN ANN  
GROSS 0072617, FILED 11/03/2006, IS GRANTED. UPON CONSIDERATION OF ALL  
BRIEF SUBMITTED, THE COURT FINDS THAT COUNT 2 IS DISMISSED AS TO ALL  
DEFENDANTS. OHIO DOES NOT RECOGNIZE A CLAIM FOR NEGLIGENT  
INFLICTION OF SERIOUS EMOTIONAL DISTRESS WHERE THE DISTRESS IS  
CAUSED BY THE PLAINTIFF'S FEAR OF A NONEXISTENT PHYSICAL PERIL. SEE  
DOBRAN V. FRANCISCAN MED. CTR., (2004)102 OHIO ST. 3D 54. MOTION TO  
DISMISS AS TO COUNTS ONE, THREE AND FOUR IS DENIED. CASE MGMNT  
CONFERENCE SET FOR 10/23/2007 AT 08:30 AM. CLDLJ 10/02/2007 NOTICE  
ISSUED



Baldwin's Ohio Revised Code Annotated Currentness

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

☞ Chapter 2744. Political Subdivision Tort Liability (Refs & Annos)

→ 2744.01 Definitions

As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

- (d) The provision of a free public library system;
- (e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;
- (f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;
- (g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;
- (h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;
- (i) The enforcement or nonperformance of any law;
- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.
- (l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;
- (m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;
- (n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;
- (o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;
- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;
- (q) Urban renewal projects and the elimination of slum conditions;

- (r) Flood control measures;
  - (s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;
  - (t) The issuance of revenue obligations under section 140.06 of the Revised Code;
  - (u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:
    - (i) A park, playground, or playfield;
    - (ii) An indoor recreational facility;
    - (iii) A zoo or zoological park;
    - (iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;
    - (v) A golf course;
    - (vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;
    - (vii) A rope course or climbing walls;
    - (viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.
  - (v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;
  - (w)(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;
  - (ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.
  - (x) A function that the general assembly mandates a political subdivision to perform.
- (D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.22 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167, of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314, of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

#### CREDIT(S)

(2006 H 162, eff. 10-12-06; 2004 S 222, eff. 4-27-05; 2002 S 106, eff. 4-9-03; 2001 S 108, § 2.03, eff. 1-1-02; 2001 S 108, § 2.01, eff. 7-6-01; 2001 S 24, § 3, eff. 1-1-02; 2001 S 24, § 1, eff. 10-26-01; 2000 S 179, § 3, eff. 1-1-02; 1999 H 205, eff. 9-24-99; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 (*State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999)); 1995 H 192, eff. 11-21-95; 1994 H 384, eff. 11-11-94; 1993 H 152, eff. 7-1-93; 1992 H 723, H 210; 1990 H 656; 1988 S 367, H 815; 1987 H 295; 1986 H 205, § 1, 3; 1985 H 176)

#### 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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▶  
Baldwin's Ohio Revised Code Annotated Currentness  
Title XXVII. Courts--General Provisions--Special Remedies  
▣ Chapter 2744. Political Subdivision Tort Liability (Refs & Annos)  
→ **2744.02 Political subdivision not liable for injury, death, or loss; exceptions**

(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees

with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil 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, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(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.

CREDIT(S)

(2007 H 119, eff. 9-29-07; 2002 S 106, eff. 4-9-03; 2001 S 108, § 2.01, eff. 7-6-01; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 (State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward (1999)); 1994 S 221, eff. 9-28-94; 1989 H 381, eff. 7-1-89; 1985 H 176)

CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article I, § 5, and the right to a remedy, under Ohio Constitution Article I, § 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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Baldwin's Ohio Revised Code Annotated Currentness  
Title XXVII. Courts--General Provisions--Special Remedies  
Chapter 2744. Political Subdivision Tort Liability (Refs. & Annos)  
→ 2744.03 Defenses and immunities

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

- (1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.
- (2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.
- (3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.
- (4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2152.19 or 2152.20 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.
- (5) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.
- (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:
  - (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil 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 an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

CREDIT(S)

(2002 S 106, eff. 4-9-03; 2001 S 108, § 2.03, eff. 1-1-02; 2001 S 108, § 2.01, eff. 7-6-01; 2000 S 179, § 3, eff. 1-1-02; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 (State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward (1999)); 1994 S 221, eff. 9-28-94; 1986 S 297, eff. 4-30-86; 1985 H 176)

CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article I, § 5, and the right to a remedy, under Ohio Constitution Article I, § 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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Baldwin's Ohio Revised Code Annotated Currentness  
Title XXVII. Courts--General Provisions--Special Remedies  
Chapter 2744. Political Subdivision Tort Liability (Refs & Annos)  
→ 2744.09 Applicability of chapter

This chapter does not apply to, and shall not be construed to apply to, the following:

- (A) Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;
- (B) Civil actions by an employee, or the collective bargaining representative of an employee, against his political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;
- (C) Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his employment;
- (D) Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;
- (E) 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.

CREDIT(S)

(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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Title XXXVII. Health--Safety--Morals

Chapter 3735. Metropolitan Housing Authority (Refs &amp; Amos)

Metropolitan Housing Authority

→3735.31 Powers of metropolitan housing authority

A metropolitan housing authority created under sections 3735.27 to 3735.50 of the Revised Code, constitutes a body corporate and politic. To clear, plan, and rebuild slum areas within the district in which the authority is created, to provide safe and sanitary housing accommodations to families of low income within that district, or to accomplish any combination of the foregoing purposes, the authority may do any of the following:

(A) Sue and be sued; have a seal; have corporate succession; receive grants from state, federal, or other governments, or from private sources; conduct investigations into housing and living conditions; enter any buildings or property in order to conduct its investigations; conduct examinations, subpoena, and require the attendance of witnesses and the production of books and papers; issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance; and in connection with these powers, any member of the authority may administer oaths, take affidavits, and issue subpoenas;

(B) Determine what areas constitute slum areas, and prepare plans for housing projects in those areas; purchase, lease, sell, exchange, transfer, assign, or mortgage any property, real or personal, or any interest in that property, or acquire the same by gift, bequest, or eminent domain; own, hold, clear, and improve property; provide and set aside housing projects, or dwelling units comprising portions of housing projects, designed especially for the use of families, the head of which or the spouse of which is sixty-five years of age or older; engage in, or contract for, the construction, reconstruction, alteration, or repair, or both, of any housing project or part of any housing project; include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions that the federal government has attached to its financial aid of the project; lease or operate, or both, any project, and establish or revise schedules of rents for any projects or part of any project; arrange with the county or municipal corporations, or both, for the planning and replanning of streets, alleys, and other public places or facilities in connection with any area or project; borrow money upon its notes, debentures, or other evidences of indebtedness, and secure the same by mortgages upon property held or to be held by it, or by pledge of its revenues, or in any other manner; invest any funds held in reserves or sinking funds or not required for immediate disbursements; execute contracts and all other instruments necessary or convenient to the exercise of the powers granted in this section; make, amend, and repeal bylaws and rules to carry into effect its powers and purposes;

(C) Borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its territorial limits; take over or lease or manage any housing project or undertaking constructed or owned by the federal government; comply with any conditions and enter into any mortgages, trust indentures, leases, or agreements that are necessary, convenient, or desirable;

(D) Subject to section 3735.311 of the Revised Code, employ a police force to protect the lives and property of the residents of housing projects within the district, to preserve the peace in the housing projects, and to enforce the laws, ordinances, and regulations of this state and its political subdivisions in the housing projects and, when authorized by law, outside the limits of the housing projects.

(E) Enter into an agreement with a county, municipal corporation, or township in whose jurisdiction the metropolitan housing authority is located that permits metropolitan housing authority police officers employed under division (D) of this section to exercise full arrest powers as provided in section 2935.03 of the Revised Code, perform any police function, exercise any police power, or render any police service within specified areas of the county, municipal corporation, or township for the purpose of preserving the peace and enforcing all laws of the state, ordinances of the municipal corporation, or regulations of the township.

CREDIT(S)

(1998 H 596, eff. 3-9-99; 1996 H 566, eff. 10-16-96; 1987 H 261, § 1, eff. 11-1-87; 1987 H 261, § 3; 1984 H 129, § 1, 3; 128 v 616; 125 v 903; 1953 H 1; GC 1078-34)

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