

IN THE SUPREME COURT OF OHIO

ANDREA RIFFLE, et al.	:	Case No. 2012-0205
	:	
Plaintiffs - Appellees,	:	On Appeal from the
	:	Ninth District Court of Appeals
v.	:	Lorain County, Ohio
	:	
PHYSICIANS AND SURGEONS	:	Court of Appeals
AMBULANCE SERVICE	:	Case No. 25829
	:	
Defendant – Appellant,	:	
	:	
and	:	
	:	
THE CITY OF AKRON, OHIO	:	
	:	
Defendant – Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE
THE OHIO MUNICIPAL LEAGUE

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**INTRODUCTION: THIS CASE INVOLVES A
MATTER OF GREAT GENERAL INTEREST**

The Ohio Municipal League (“League”), as amicus curiae on behalf of the City of Akron (“City”), urges this Court to accept jurisdiction over this case in order to reverse the decision of the Ninth District Court of Appeals (“Ninth District”) in *Riffle v. Physicians & Surgeons Ambulance Serv.*, 2011-Ohio-6595. The Ninth District erroneously held that R.C. 4765.49(B) applies, to the exclusion of R.C. 2744.02, in cases involving alleged willful or wanton misconduct by a first responder, EMT, or paramedic working for a political subdivision. The Ninth District refused to apply R.C. Chapter 2744 in this case. Instead, it improperly engaged in an unnecessary conflict analysis.

This Court has an opportunity, once again, to clarify the application of R.C. Chapter 2744, the Political Subdivision Tort Liability Act, when a political subdivision is sued in tort. This Court has repeatedly made clear that R.C. Chapter 2744 is the statutory framework that is to be applied when determining whether a political subdivision is liable in tort. The issue raised in this case is whether R.C. Chapter 2744 or R.C. 4765.49(B) is the applicable statute for determining whether a political subdivision is immune from suit that arises out of the provision or non-provision of emergency medical services by the political subdivision’s paramedics. This matter is of great concern to local governments because an inconsistent application of immunity to political subdivisions will subject local governments to uncertain liability and costs. This result is contrary to the purpose of the Political Subdivision Tort Liability Act, which is to preserve the fiscal integrity of political subdivisions. Local governments are frequently subjected to tort claims, and a clear and uniform application of immunity to these claims is essential to

ensure the continued and orderly operation of local governments and the continued ability of local governments to provide for public health, and safety services to their residents.

The Ninth District's decision in *Riffle*, if it is allowed to stand, will strip local governments of an express grant of immunity conferred upon them by R.C. 2744.02. The League asserts that this is contrary to the language and established intent of the statute. The purpose behind the legislature's enactment of R.C. Chapter 2744 was to preserve the fiscal integrity of political subdivisions in response to the judiciary's abrogation of common law sovereign immunity. See *Estate of Graves v. Circleville*, 124 Ohio St.3d 339, 2010-Ohio-168, 922 N.E.2d 201, ¶ 12. Consistent with this purpose, R.C. Chapter 2744 expressly confers immunity upon political subdivisions for the provision or non-provision of emergency medical services.

Since its enactment, multiple courts of appeals have attempted to apply R.C. 4765.49(B) to tort suits arising out of the provision or non-provision of emergency medical services by political subdivision employees. *Blair v. Columbus Div. of Fire*, 2011-Ohio-3648, ¶ 28 (10th Dist.); *Johnson v. City of Cleveland*, 194 Ohio App. 3d 355, 2011-Ohio-2152, ¶21 (8th Dist.); *Fuson v. City of Cincinnati*, 91 Ohio App. 3d 734, 738, 633 N.E.2d 612 (1st Dist. 1993). In each case, the court has either tried to apply R.C. 4765.49(B) in lieu of R.C. Chapter 2744, or has construed R.C. 4765.49(B) as creating an exception to immunity under R.C. 2744.02(B). This is inconsistent with this Court's application of R.C. Chapter 2744.

This case, once again, provides an opportunity for the Court to clarify the scope of R.C. Chapter 2744 and correct the Ninth Circuit's erroneous application of the statute. For this reason and the other reasons contained herein, this case is worthy of the time and attention of this Court, and the Ohio Municipal League urges this Court to accept jurisdiction over it.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of Ohio cities and villages. The Ohio Municipal League and its members have an interest in ensuring the proper application of R.C. Chapter 2744 in order to preserve the fiscal integrity of political subdivisions and avoid unwarranted and unnecessary litigation, liability, and costs that arise out of this improper application.

The League, by this memorandum, respectfully seeks to advise the Court of the urgency and implications of the Ninth District's decision in this case.

STATEMENT OF THE CASE AND FACTS

The League hereby adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Memorandum in Support of Jurisdiction of Appellant City of Akron, Ohio.

ARGUMENT

Proposition of Law No. 1: R.C. Chapter 2744 is the applicable statute to be analyzed for determining whether a political subdivision is immune from tort liability.

The Political Subdivision Tort Liability Act, codified in R.C. Chapter 2744, is the governing statute in Ohio that determines the tort liability of a municipal corporation. *See* R.C. 2744.02(A)(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,”) (emphasis added). The Act was enacted to provide Ohio’s political subdivisions with immunity from tort liability with a few enumerated exceptions, which are to be construed narrowly. *See Terry v. Ottawa Cty. Bd. of Mental Retardation & Developmental Disabilities*, 151 Ohio App.3d 234, 2002-Ohio-7299, 783 N.E.2d 959, ¶ 10 (6th Dist.); *Doe v. Dayton City*

School Dist. Bd. of Edu., 137 Ohio App.3d 166, 738 N.E.2d 390 (1999). The manifest purpose of the Political Subdivision Tort Liability Act is the preservation of the fiscal integrity of political subdivisions. *Estate of Graves, supra*, at ¶ 12.

Determining whether a political subdivision is immune from tort liability involves a three-tiered analysis under the Political Subdivision Tort Liability Act. *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716. The first-tier is the general rule that political subdivisions are immune from tort liability incurred in connection with the performance of a governmental or proprietary function. R.C. 2744.02(A)(1). The second-tier requires a court to determine whether any of the five statutory exceptions provided in R.C. 2744.02(B) apply to remove the general grant of immunity. *Hortman* at ¶ 12. Finally, under the third-tier of analysis, immunity can be reinstated if the political subdivision can successfully argue that any of the defenses contained in R.C. 2744.03 applies. *Id.*

The provision or non-provision of police, fire, emergency medical, ambulance, and rescue services or protection is a governmental function. R.C. 2744.01(C)(2)(a). Accordingly, a political subdivision is generally immune from liability caused by any act or omission of an employee in connection with the provision of emergency medical services.

The City is a political subdivision whose emergency medical personnel responded to Ms. Riffle's 911 call. The paramedics administered emergency medical services after arriving, which is the focus of the case at bar. Therefore, any injury that allegedly occurred as a result of the paramedics' actions occurred in connection with a governmental function, and the general grant of immunity under R.C. 2744.02(A)(1) applies.

Proposition of Law No. 2: R.C. 4765.49(B) does not expressly impose civil liability on political subdivisions, and, therefore does not create an exception to the general rule of immunity provided under R.C. 2744.02(A)(1).

As the foregoing demonstrates, a political subdivision is immune from liability for any alleged injury that occurs in connection with the provision or non-provision of emergency medical services unless one of the exceptions in R.C. 2744.02(B) applies. When a plaintiff has not shown that a specific exception to immunity under R.C. 2744.02(B) applies, a court need not move on to consider the defenses and immunities provided under R.C. 2744.03. *Widen v. Pike Cty.*, 187 Ohio App.3d 510, 2010-Ohio-2169, 932 N.E.2d 929, ¶ 13 (4th Dist.). In this case, the only exception that may apply is R.C. 2744.02(B)(5), which states that “a political subdivision is liable for injury, death, or loss to person or property if civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including but not limited to, section 2743.02 and 5591.37 of the Revised Code.”

Ms. Riffle argues that R.C. 4765.49(B) expressly imposes liability on political subdivisions for the willful or wanton misconduct of their employees who provide emergency medical services. The Ninth District, however, expressly stated in its opinion that “Section 4765.49(B) does ‘not expressly [impose]’ civil liability on political subdivisions under Section 2744.02(B)(5). *Riffle v. Physicians & Surgeons Ambulance Serv.*, 2011-Ohio-6595, ¶ 8. Therefore, according to the Ninth District, no exception to immunity under R.C. 2744.02(B) removes the general grant of immunity afforded the City under R.C. 2744.02(A)(1). Consequently, Ms. Riffle failed to establish that a specific exception to immunity under R.C. 2744.02(B) applies, and this Court need not consider the defenses and immunities provided under R.C. 2744.03. The inquiry under R.C. Chapter 2744 ends at this point.

Since no exception to immunity is applicable to the case at bar, the City is immune from liability, and the Ninth District erred by not granting the City's motion for judgment on the pleadings.

Despite the Ninth District's conclusion that R.C. 4765.49(B) does not expressly impose civil liability on political subdivisions, it nevertheless determined that R.C. 4765.49(B) is in conflict with R.C. 2744.02(A)(1), and that R.C. 4765.49(B) is a special provision that should prevail over the more general R.C. 2744.02(A)(1) under R.C. 1.51. The Ninth District stated that this conclusion is consistent with the conclusions reached by other districts. *See Blair v. Columbus Div. of Fire*, 2011-Ohio-3648 (10th Dist.); *Johnson v. City of Cleveland*, 194 Ohio App. 3d 355, 2011-Ohio-2152 (8th Dist.); *Fuson v. City of Cincinnati*, 91 Ohio App. 3d 734, 738, 633 N.E.2d 612 (1st Dist. 1993).

Contrary to the Ninth District's opinion, however, the Tenth District in *Blair* and the Eighth District in *Johnson* each analyzed R.C. 4765.49(B) as an exception to immunity under R.C. 2744.02(B)(5). While neither court went as far to say that R.C. 4765.49(B) expressly imposes liability upon a political subdivision, each court engaged in the three-tiered analysis under R.C. Chapter 2744, and concluded that R.C. 4765.49(B) created an exception to immunity to the extent there is willful and wanton misconduct in connection with the provision of emergency medical services. *See Blair* at ¶¶ 21-28, *Johnson* at ¶ 21. This conclusion led each court to analyze whether willful or wanton misconduct actually occurred in each case.

The *Fuson* case is also inconsistent with the case at bar. In *Fuson*, the First District analyzed R.C. Chapter 2744 in relation to former R.C. 3303.21, the predecessor statute to R.C. 4765.49(B). *Id.* at 738. The First District recognized that R.C. 2744.02(A) confers blanket immunity upon political subdivisions, unless R.C. 2744.02(B) specifically imposes an exception

to the immunity. The court concluded that former R.C. 3303.21 specifically imposed liability on political subdivisions, and proceeded to analyze whether there was willful and wanton misconduct. *Id.*

In *Swanson v. Columbus*, 87 Ohio App.3d 748, 622 N.E.2d 1181 (10th Dist. 1993), cited by the First District in *Fuson*, the Tenth District concluded that R.C. 2744.02 “provides that there is no liability of a political subdivision” when its employees engaged in rescue operations in an effort to rescue the plaintiff’s decedent. *Swanson* at 751. The Tenth District declined the plaintiff’s request to apply the common law special-duty rule instead of R.C. Chapter 2744 to the case, determining that R.C. Chapter 2744 was the applicable provision. *Id.*

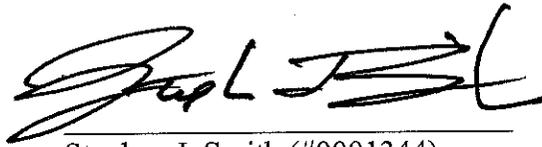
It is respectfully submitted that the inconsistent interpretations and applications of the statutes by the various courts of appeals invite this Court’s attention in order to provide a uniform method of applying the law.

In the case at bar, the Ninth District’s analysis should have ceased once it determined that R.C. 4765.49(B) did not expressly impose liability on political subdivisions for willful or wanton misconduct of their employees who provide emergency medical services. This court has consistently applied and made clear that the three-tiered analysis under R.C. Chapter 2744 is the appropriate analysis for determining a political subdivision’s liability. Since the exceptions to immunity found in R.C. 2744.02(B) are to be narrowly construed, if R.C. 4765.49(B) does not specifically impose liability on a political subdivision, as the Ninth District expressly determined, the City cannot be held liable for any alleged injury that occurred while it was providing emergency medical services in this case.

CONCLUSION

Because the analyses and the applications of R.C. 2744.02, and its relationship to R.C. 4765.49(B) by the various courts of appeals in this state are so divergent, and the correct application of the law should be uniformly applied throughout the state, this case presents a matter of great public and general interest to state and local governments throughout Ohio. The exercise of jurisdiction over this case is warranted and respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen J. Smith", written over a horizontal line.

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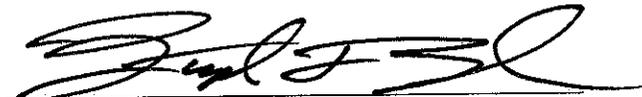
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CERTIFICATE OF SERVICE

A copy of the foregoing *Memorandum in Support of Jurisdiction of Amicus Curiae the Ohio Municipal League*, has been sent via regular U.S. mail, postage pre-paid this ____ day of February, 2012 to:

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