

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 12-0205

Appeal from the Court of Appeals
Ninth Appellate District
Summit County, Ohio
Case No. 25829

ANDREA RIFFLE, et al.

Plaintiff-Appellees

v.

PHYSICIANS AND SURGEONS AMBULANCE SERVICE
and
CITY OF AKRON

Defendant-Appellant

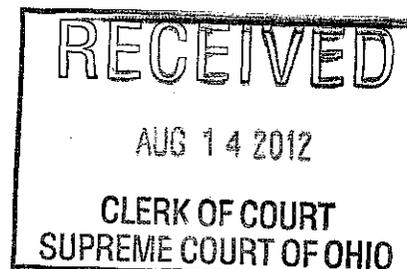
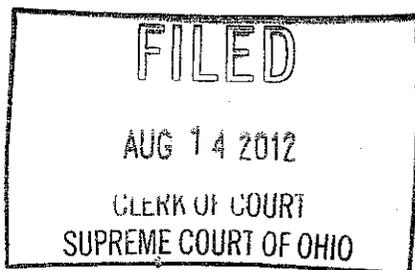
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R.C. 2745.01
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I. INTRODUCTION

In enacting R.C. 2744.03(A)(7), the General Assembly clearly intended for a political subdivision to avail itself to additional immunities and defenses found elsewhere in the Revised Code or at common law, in the event that an R.C. 2744.03(B)(1)-(5) exception to immunity applied. The General Assembly had R.C. 4765.49 in mind as one of those third-tier immunity defenses.

Appellees continue to mistakenly contend that R.C. 4765.49 serves to expressly impose liability on a political subdivision within the meaning of the R.C. 2744.02(B)(5) exception to immunity. The Ninth District Court of Appeals correctly rejected that contention. *Riffle v. Physicians and Surgeons Ambulance Service*, 9th Dist. No. 25829, 2011-Ohio-6595 at ¶s 4-8. This Court must also reject that proposition of law.

II. LAW AND ARGUMENT

Proposition of Law : R.C. 4765.49 does not conflict with R.C. 2744.02 under a R.C. 1.51 analysis, but serves as an additional immunity defense under R.C. 2744.03(A)(7).

R.C. 4765.49 Does Not Expressly Impose Liability on a Political Subdivision Within The Meaning of R.C. 2744.02(B)(5).

This Court must follow the ruling of the Ninth District Court of Appeals and reject Appellees' notion that R.C. 4765.49 expressly imposes civil liability on the City of Akron under the R.C. 2744.02(B)(5) exception to R.C. 2744.02(A) immunity.

R.C. 2744.02(B)(5) provides in part:

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. 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***.

R.C. 4765.49(B) is entitled “Civil immunity of emergency medical personnel and agencies” and provides in part:

(B) A political subdivision***that provides emergency medical services*** is not liable in damages in a civil action for injury, death or loss to person or property arising out of any actions taken by a first responder, EMT-basic, EMT-1 or paramedic working under the ***employee’s jurisdiction, or for injury, death, or loss to person or property arising out of any actions of licensed medical personnel advising or assisting the first responder, EMT-basic, EMT-1, or paramedic, unless the services are provided in a manner that constitutes willful or wanton misconduct.

Initially, it is well established in Ohio that the title of a statute is a good source to ascertain the General Assembly’s intent. *Commercial Credit Co. v. Schreyer*, 120 Ohio St. 568 (1929); *Bobo v. Bell*, 112 Ohio App. 357, 359 (1959). In ascertaining the legislative intent of R.C. 2305.19, the *Bobo* Court held:

Question number three (assignment of error) is certainly not unique or unusual but it must be a confusing one as indicated by the frequency of its appearance. We feel that this is due in part to the tendency of judges and lawyers alike, to ignore the title of Section 2305.19 of the Ohio Revised Code. It is exceedingly short and explicit. It should be accepted for what it is, namely, the expression of the legislative intent as to the effect and scope of the statute.

Bobo, 112 Ohio App. at 359. Herein, R.C. 4765.49 is entitled “**Civil immunity of emergency medical personnel and agencies.**” The title is explicit and expressly states the Legislature’s intent that R.C. 4765.49 is an immunity defense to a lawsuit, not an independent cause of action. This is precisely what the Eighth District Court of Appeals found in *Bostic v. City of Cleveland*, 8th Dist. No. 79336, 2002-Ohio-333. In *Bostic*, the Court held that R.C. 4765.49 is an affirmative defense that grants immunity to paramedics and political subdivisions that goes beyond that granted in R.C. 2744.02. *Id.*

Furthermore, the examples of express imposition of liability listed in R.C. 2744.02(B)(5) are clear in their purpose to *impose liability* when it would not otherwise exist. R.C. 2743.02 provides that “[t]he State hereby waives its immunity from liability and consents to be sued.” R.C. 5591.37 states

that “[n]egligent failure to comply with section 5591.36 of the Revised Code shall render the county liable for all accidents or damages as a result of that failure.” By contrast, R.C. 4765.49 purpose is clearly to *create or establish immunity* for negligent conduct by first responders when liability would otherwise exist. As the Ninth District Court of Appeals observed, in the absence of R.C. 4765.49, liability for both negligence and willful or wanton misconduct would exist.

Moreover, R.C. 4765.49 contains an “unless” clause (“A political subdivision is not liable...unless the services are provided in a manner that constitutes willful or wanton misconduct”). Ohio courts that have construed other statutes with “unless” or “except” clauses similar to R.C. 4765.49 found that the language of such statutes does not expressly impose liability on a political subdivision.

In *Svette v. Caplinger*, 4th Dist. No. 06CA2910, 2007-Ohio-664, the Court interpreted the former version of R.C. 4931.49(A), which provided that “[t]he state...is not liable in damages...arising from any act or omission, except willful or wanton misconduct, in connection with...bringing into operation a 9-1-1 system” The Court held that language did not expressly impose liability for purposes of R.C. 2744.02(B)(5). Also, *Messer v. Butler County Bd. of Cmm’rs*, 12th Dist. No. CA2008-12-290, CA2009-01-004, 2009-Ohio-4462 (interpreting the current version of R.C. 4931.49(B)). In *Magda v. Greater Cleveland Reg’l Transit Auth.*, 8th Dist. No. 92570, 2009-Ohio-6219, the Court interpreted R.C. 2745.01, which provides that an employer is not liable for tortious conduct “unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.” The Court held that language did not expressly impose liability on a political subdivision.

IV. CONCLUSION

R. C. 4765.49 does not expressly impose liability on a political subdivision within the meaning of R.C. 2744.02(B)(5). R.C. 4765.49 serves an additional immunity defense under R.C. 2744.03(A)(7).

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Reply Brief was sent this 13th day of August, 2012 by first-class United States mail, postage prepaid, to the following:

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