

IN THE SUPREME COURT OF OHIO

AMBER SALLEE (Minor), et al. : Case No. 14-0727
Appellee : On Appeal from the Hamilton
County Court of Appeals,
vs. : First Appellate District of Ohio
STEPHANIE WATTS, et al : Court of Appeals Case No. C 1300122
Appellant :

MERIT BRIEF OF APPELLANT THREE RIVERS LOCAL SCHOOL DISTRICT

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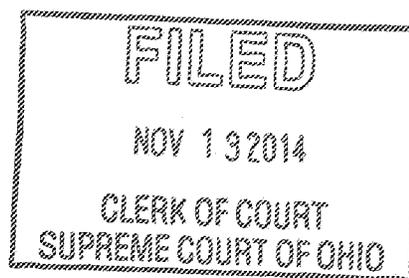


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STATEMENT OF FACTS

On February 26, 2009 Plaintiff/Appellant Amber Sallee (then age 6) was a first grade student at Miami Heights School in the Three Rivers Local School District. (T.d. 58 at 14.) After school plaintiff/appellant was dropped off at her designated stop, the corner of Laird and North Miami Street, in Cleves by a Three Rivers bus. (T.d. 58 at 40.) Lisa Krimmer, while in the course and scope of her employment with Defendant/Appellee Three Rivers, was operating the school bus in which plaintiff/appellant was a passenger. Id.

Plaintiff/Appellant's stop was the first stop. (T.d. 57, at 16.) Instead of crossing the street and going home as she always did, plaintiff/appellant stayed on the same side of the street and ran down the block with another student named C.J. (T.d. 57 at 14, 15, & 25.) Ms. Krimmer tried to get her attention by honking the horn but was unsuccessful, so she continued on with her route to drop off the remaining students. (T.d. 57 at 13.) Ms. Krimmer called Base 2 and let them know that if plaintiff/appellant's mother called looking for her that she was at C.J.'s house. (T.d. 57 at 16.) After the bus was several blocks down North Miami Street at its third stop, plaintiff/appellant attempted to cross the street and was struck by Ms. Stephanie Watts causing personal injury. (T.d. 58 at 39 & 40.)

Following the accident, Ms. Janet Cox, an eye witness, stated she had a clear view of the incident and saw plaintiff/appellant enter the street near parked cars and Ms. Watts approaching vehicle, but did not see a school bus. (T.d. 64 at 12, 19, 25.) Similarly plaintiff/appellant's mother testified upon leaving her house she did not know the location of the bus. (T.d. 58 at 41.) In fact not until she was informed of the bus's location did she see it several blocks away. (T.d. 58 at 40.)

Plaintiff/Appellant filed suit in the Court of Common Pleas, Hamilton County Ohio on February 27, 2012. (T.d. 2.) The complaint alleged personal injuries as a result of Stephanie Watts' negligence. (T.d. 2 ¶¶ 1-3.) Additionally, plaintiff/appellant alleged Ms. Krimmer negligently dropped her off at her assigned bus stop without following the correct procedures for a child of tender years and that as a direct and proximate result of Ms. Krimmer's negligence she sustained personal injury. (T.d.2 ¶¶ 5-8.) Plaintiff/Appellant sued Three Rivers imputing the alleged negligence of Ms. Krimmer. (T.d. ¶¶ 10&11.)

On April 9, 2012, a Motion to Dismiss Lisa Krimmer was filed. (T.d.23.) After it went unopposed, the Court granted the motion on May 14, 2012. (T.d.32.) On December 19, 2012 Three Rivers filed its Motion for Summary Judgment. (T.d.50.) Plaintiff/Appellant's Response to Defendant's motion was filed on January 8, 2013. (T.d.51.) On January 10, 2013, Three Rivers filed a Reply. (T.d.52.) The Trial Court, by Judgment Entry of January 31, 2013, granted the Motion for Summary Judgment, and the Judgment Entry was filed that day. (T.d.60.)

On February 4, 2013 Defendant Stephanie Watts filed a Motion for Summary Judgment. (T.d.61.) The Trial Court granted the motion by Judgment Entry on February 13, 2013. (T.d.68.) Plaintiff/Appellant dismissed Defendant Allstate on February 8, 2013. (T.d. 67.)

On February 25, 2013, plaintiff/appellant filed a Notice of Appeal of the trial court's decision granting Three Rivers' Motion for Summary Judgment. (T.d.69.)

The First District Court of Appeals overruled the lower court's grant of summary judgment in favor of Three Rivers. Three Rivers Local School District now appeals to the Supreme Court of Ohio to correct the First District Court's errors.

ARGUMENT

Proposition of Law No. 1: Claims against School Districts involving students who exit from buses and are subsequently injured when the bus is no longer present, do not involve the operation of a motor vehicle.

A school district is entitled to immunity under R.C. 2744. The motor vehicle exception found in R.C. 2744.02(B)(1) does not apply when the bus is not present and cannot strip away a school district's immunity.

The Ohio Supreme Court has set forth a three-tiered analysis to determine whether a political subdivision is immune from tort liability. First, the political subdivision must qualify for immunity set forth under R.C. 2744.02(A)(1). *Cater v. City of Cleveland*, 83 Ohio St. 3d 24, 28, 697 N.E.2d 610 (1998). Second, if the political subdivision qualifies for immunity, courts must determine whether any of the exceptions for immunity apply. *Id.* Finally if an exception applies, under the third tier, the immunity can be reinstated by a political subdivision through the defenses or further immunities of R.C. 2744.03. *Id.*

A political subdivision is defined as a school district or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. R.C. 2744.01(F). Three Rivers, like any other school district, is a "political subdivision" under Ohio Law.

A political subdivision is not liable for 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. R.C. 2744.02 (A)(1). Providing transportation for students to and from school is a governmental function. *See Vargas v. Columbus Pub. Schools*, 10th Dist. Franklin No. 05AP-658, 2006-Ohio-7108, ¶16, citing *Doe v. Dayton City School Dist. Bd of Edn.*, 137 Ohio App.3d 166, 170, 738 N.E.2d 390(2nd Dist. 1999). Therefore, a school district, such as Three Rivers, and its employees may raise the shield

of sovereign immunity in claims that arise out of busing of students to and from school.

The shield is subject to five basic exceptions. R.C. 2744.02 (B)(1) –(5). Exception (2) does not apply because courts have held that the transportation of students is a governmental function and not a proprietary function. *Day v. Middletown-Monroe City School District*, 12th Dist. Butler, No. CA99-11-186, 2000 WL 979141 8* (July 17, 2000).

The trial court correctly found none of the exceptions applied in the case at issue. The First District Court of Appeals ruled the exception listed in R.C. 2744.02(B)(1) abrogates a school district's immunity even when a bus is not present at the time of injury. The exception states 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 to their employment and authority. R.C. 2744.02(B)(1).

The immunity exception found in R.C. 2744.02(B)(1) is not applicable. Proceeding on a bus route after the student safely arrives at a friend's residence instead of crossing to the student's residence side of the street does not equate to the "negligent operation of any motor vehicle." Ohio Courts have previously ruled a violation of R.C. 4511.75(E) does not establish the "negligent operation of any motor vehicle" without the bus present when the injury occurs. *Day v. Middletown-Monroe* at *4 (July 17, 2000).

Previously, the Twelfth District and Second District Courts of Appeals held in similar cases that the operation of a motor vehicle immunity exception does not apply since the students' injuries did not result from the operation of any motor vehicle. *Day, supra* and *Glover v Dayton Public Schools, et al.*, 2nd Dist. Montgomery, 1999 WL 958492, *1 (Aug. 13, 1999).

In *Glover*, a kindergarten student in the Dayton Public Schools and was transported to and from school by a Dayton Public School's bus. *Glover v Dayton Public Schools, et al.*, at *1.

In the afternoon of September 20, 1996 the bus driver dropped Dericka and her brother Nicholas off at their designated spot. *Id.* The bus driver then proceeded down the road to his next stop. *Id.* At that point Dericka attempted to cross the street and was struck by a motor vehicle driven by Yvette Reed. *Id.* Dericka Glover and her mother Billie Webb filed suit against the Dayton Public Schools. *Id.* Dayton Public Schools filed a motion for summary judgment arguing that they were entitled to immunity and summary judgment was granted. *Id.* Dericka Glover and her mother appealed. *Id.*

The Second District Court of Appeals stated: “The fact is that the injury in the present case did not occur during Dericka Glover’s physical discharge from the bus, or even when the bus was present. In fact, the bus was two stops away when the accident occurred.” *Id.* at *6. “In our opinion, the facts of the present case do not fit within the ‘operation of any motor vehicle,’ as that term has been interpreted.” *Id.*

We believe that the interpretation of this exception must be reasonably restricted, particularly in view of the Supreme Court’s observation that ‘the manifest statutory purpose of R.C. Chapter 2744 is the preservation of the fiscal integrity of political subdivisions.’

Id., citing *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St. 3d 450 (1994). The Court held that because none of the five exceptions to R.C. 2744.02(B) applied, Dayton Public Schools was immune from liability.

The Twelfth District has also ruled the immunity exception listed in R.C. 2744.02(B)(1) does not apply when a school bus was not present at the time of the injury. *Day v. Middletown-Monroe*, 12th Dist. Butler, No. CA99-11-186, 2000 WL 979141, *4 (May 1, 2000). Nichole Day was a 16-year-old student at Garfield School located in the Middletown-Monroe City School District. *Id.* at *1. On March 17, 1997 Nichole was transported by bus from school to home *Id.* Walking home, Nichole crossed a set of railroad tracks. *Id.* While crossing the tracks, she was

struck by a freight train and suffered serious injuries. *Id.* Nichole's mother Linda Day filed suit against the Middletown-Monroe City School District. *Id.*

The Twelfth District Court of Appeals stated: "Although operation of a motor vehicle may encompass more than simply driving a vehicle, the term primarily concerns the physical discharge from the bus of the child." *Id.* at *4. Since Nichole Day's mother made no allegation in her complaint that the bus was present when Nichole Day was struck by the freight train "there is no legal basis for asserting that Nichole's injuries resulted from the 'operation of any motor vehicle.'" *Id.* The Twelfth district held R.C. 2744.02(B)(1) did not remove Middletown-Monroe City School District's immunity shield. Further, the court ruled, a violation of R.C. 4511.75(E) does not establish a legal basis for asserting that the proximate cause of a child's injuries result from the operation of any motor vehicle without an allegation that the bus was present when the child was struck. *Id.* at *7.

Plaintiff/Appellant's injury did not arise out of the "operation" of the bus. The injury in the present case did not occur during the physical discharge from the bus or even when the bus was present. When a bus is not present, the operation of a motor vehicle exception of R.C. 2744.02(B)(1) does not apply.

Proposition of Law No. 2: A school bus driver does not violate R.C. 4511.75 (E) when he/she starts a bus after a child runs off without permission and without first reaching a place of safety on the child's residence side of the road

A bus driver does not violate R.C. 4511.75(E) when he/she starts the bus after a student exits the bus and runs off to another student's house instead of crossing to his/her residential side of the road. When students do not listen to a bus driver, act without the permission of a bus driver, or fail to follow protocols of riding the school bus, it is impossible for the driver to follow R.C. 4511.75(E). Therefore, the statute must be applied logically to the facts of a case.

Therefore, a violation can only occur when a school bus is in the nexus of the student's location.

The First District Court of Appeals held when a bus driver leaves a bus stop before a student crosses to his residence side of the street the driver violates R.C. 4511.75(E). *Sallee v. Watts*, 1st Dist. Hamilton No. C-130122, 2014-Ohio 717 ¶8. When Plaintiff/Appellant exited the Three Rivers school bus, she ran down the street with another student. T.d. 54 at 14, 15 & 25. The driver, Ms. Krimmer, tried to get her attention by honking the horn but was unsuccessful. T.d. 57 at 13. The First District Court of Appeals stated, "it is hard to imagine what more Krimmer could have done in this situation." *Id.* at ¶12. However, the court interpreted R.C. 4511.75(E) to require that a bus driver remain stopped when a student runs down the street, proceeds into another student's house or otherwise fails to cross the street while moving outside the area of supervision of the bus driver. *Id.* Therefore, based on the First District Court of Appeals holding a school district must require a bus driver to indefinitely stay stopped with a bus full of students or face liability under R.C. 4511.75(E).

In reaching the conclusion, the court stated, "as illogical as that result may be, it is not within the authority of this court to continece any other." *Sallee* at ¶13.

The Supreme Court of Ohio has long held the principle of law, "in construing a statute, a construction which results in a ridiculous or absurd situation must be avoided if reasonably possible." *State ex rel Haines v. Rhodes*, 168 Ohio St. 165,170, 151 N.E.2d 716 (1958). The Supreme Court stated,

"The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences. It is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result."

State ex rel Cooler v. Savord, 153 Ohio St. 67, 92 N.E.2d 390, paragraph one of the syllabus (1950).

An illogical result, as the First District Court of Appeals called it, is exactly what the principle laid out by the Supreme Court is designed to avoid. Based on the First District's ruling a multitude of absurd or unreasonable consequences would equate to a violation of R.C. 4511.75(E).

For example, if a student leaves the bus and instead of crossing the street to the residential side enters a friend's house and spends the night, this result would force the bus to close the street for the night as it indefinitely must wait for the student to cross to his or her residential side of the street. The decision would also require a bus driver to wait indefinitely if a student exits the bus and enters a vehicle before crossing to the residential side and drives away to ensure upon the vehicle's return the student crosses to his or her residential side of the street. This court's reading of the statute would always require the bus driver to indefinitely wait with a bus full of children, no matter the length of time after the student exits the bus, until the student crosses the street to his or her residential side. These absurd, unreasonable and illogical results are not what the legislature intended in writing R.C. 4511.75(E).

The purpose of R.C. 4511.75(E) is to protect children who are boarding and leaving buses, who are at risk when crossing in front of a school bus and other vehicles on the road. *Middletown v. Campbell*, 69 Ohio App 3d 411, 416, 590 N.E.2d 1301 (12th Dist.1990). The purpose, therefore, is tied to the nexus of the bus and student. When a student leaves the supervision of the bus driver, it is impossible for a school district's bus driver to protect the child. Once a student is outside the scope of a bus driver's supervision, the driver's act or omission by starting a bus is not within the nexus of injury. Therefore, a school district's bus driver does not violate R.C. 4511.75(E) when he/she starts a bus after the child runs off without permission and without first reaching a place of safety on the child's residence side of the road.

Proposition of Law No. 3: A violation of R.C. 4511.75 (E) involves negligent supervision of a child and not the negligent operation of a motor vehicle

While R.C. 4511.75(E) is found under the chapter of the Ohio Code involving motor vehicles, it does not follow that a violation of the statute must equate to a violation involving the operation of a motor vehicle. Not every duty assigned to a bus driver by statute or administrative code constitutes the operation of a motor vehicle. *Doe v. Marlinton Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 12, 18, 907 N.E.2d 706 (2009).

The First District Court of Appeals ruled starting a bus before a student crosses to his/her residential side of the road involves the operation of a motor vehicle. *Sallee v. Watts*, 2st Dist. Hamilton No. C-130122, 2014-Ohio 717 ¶14. The court based the opinion on the Supreme Court of Ohio's extended definition of operation found in *Doe v. Marlinton Local School Dist. Bd. of Edn.* *Id.* at ¶7.

In *Doe*, the Supreme Court of Ohio went through detailed analysis to define the word operation within the immunity exception found in R.C. 2744.02(B)(1). *See Doe v. Marlinton*. The analysis was required because the legislature did not define the term. *Doe* at 16. The court ruled the immunity exception in R.C. 2744.02(B)(1) "pertains only to negligence in driving or otherwise causing the vehicle to be moved." *Id.* at 18. In the analysis, this Court stated it did not find persuasive the argument that "the operation of a motor vehicle under Michigan governmental immunity statute 'encompasses activities that are directly associated with the driving of a motor vehicle'" and did not apply that standard to Ohio's immunity statute. *Id.* at 19.

The Court explained supervision of students may be a part of bus drivers' duties, however, not every duty required of a bus driver constitutes the operation of a motor vehicle within in the immunity exception found in R.C. 2744.02(B)(1). *Id.* at 18.

The First District Court of Appeals equated a bus driver's duty to supervise a child across

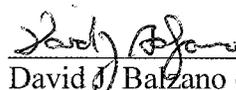
the road to his/her residential side to the operation of a motor vehicle. While a duty to supervise children crossing the street before starting the bus may encompass an activity associated with driving a motor vehicle, the Supreme Court of Ohio previously found not all activities associated with driving constitute the operation of a school bus. *Id.* at 19.

As was the case in *Doe*, the plain language of R.C. 2744.02(B)(1)'s exception to a school district's immunity does not include within its scope the negligent supervision of the conduct of students who exit the bus and leave or ignore the bus driver as the plaintiff/appellant did by running down the street to another student's house. R.C. 4511.75(E) involves a bus driver's supervision of students after they have exited the bus, not the operation of a motor vehicle.

CONCLUSION

Based on the foregoing, Appellant Three Rivers Local School District respectfully requests this Court to overturn the First District Court of Appeals Decision and to reinstate Appellant's Summary Judgment granted by the trial court.

Respectfully submitted,



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CERTIFICATION

I hereby certify that a copy of the foregoing has been served by ordinary U.S. Mail upon the following this 12th day of November, 2014.

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IN THE SUPREME COURT OF OHIO

AMBER SALLEE (Minor), et al.

Plaintiffs-Appellants

vs.

STEPHANIE WATTS, et al.

Defendant-Appellee

: Case No.

14-0727

: On Appeal from the Hamilton
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: Court of Appeals Case No. C 1300122

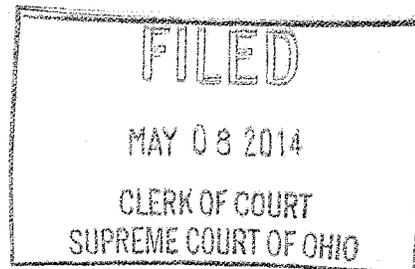
NOTICE OF APPEAL OF DEFENDANT-APPELLEE THREE RIVERS LOCAL
SCHOOL DISTRICT

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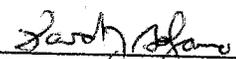
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**NOTICE OF APPEAL OF DEFENDANT-APPELLEE THREE RIVERS LOCAL
SCHOOL DISTRICT**

Defendant-Appellee, Three Rivers Local School District, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First Appellate District, entered in the Court of Appeals Case No.: C 1300122 on February 28, 2014 and Entry overruling Application for Reconsideration entered March 26, 2014.

Respectfully submitted,

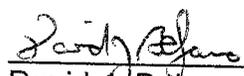


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I hereby certify that a copy of the foregoing has been served by ordinary U.S. Mail upon the following this 8th day of May, 2014.

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David J. Balzano (0061238)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
FEB 28 2014

AMBER SALLEE, a minor, by her
parent and next friend, Pamela Petti,

Plaintiff-Appellant,

and

PAMELA PETTI,

Plaintiff,

vs.

STEPHANIE WATTS,

LISA KRIMMER,

and

ALLSTATE INSURANCE COMPANY,

Defendants,

and

THREE RIVERS LOCAL SCHOOL
DISTRICT,

Defendant-Appellee.

APPEAL NO. C-130122
TRIAL NO. A-1201528

JUDGMENT ENTRY.



D105394739

This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is reversed and cause remanded for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.

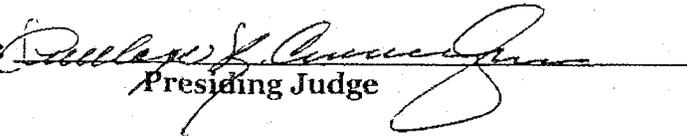
OHIO FIRST DISTRICT COURT OF APPEALS

ENTERED
FEB 28 2014

The Court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To the clerk:

Enter upon the journal of the court on February 28, 2014 per order of the court.

By: 
Presiding Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
MAR 26 2014

AMBER SALEE (MINOR), et al.,

APPEAL NO. C-130122

Appellants,

vs.

ENTRY OVERRULING
APPLICATION FOR
RECONSIDERATION

STEPHANIE WATTS, et al.,



D105673023

Appellees.

This cause came on to be considered upon the application for reconsideration filed by appellee, Three Rivers Local School District.

The Court finds that the application is not well taken and is overruled.

To the clerk:

Enter upon the journal of the court on MAR 26 2014 per order of the court.

By:

A handwritten signature in black ink, appearing to read "Peter D. ...".

Presiding Judge

(Copies sent to all counsel)