

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 :

**REPLY BRIEF OF APPELLANT
THREE RIVERS LOCAL SCHOOL DISTRICT**

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TABLE OF CONTENTS

TABLE OF AUHORITIES 3

I. INTRODUCTION..... 4

II. REBUTTAL ARGUMENT..... 6

 A. R.C. 4511.75(E) should be limited to a reasonable interpretation involving
 the nexus of the school bus and injury..... 6

 B. R.C. 4511.75(E) is a statute mandating a bus driver’s supervision..... 8

III. CONCLUSION..... 11

CERTIFICATE OF SERVICE 12

TABLE OF AUHORITIES

Cases

<i>Culwell v. Brust</i> , 91 Ohio App. 309, 108 N.E.2d 173 (4 th Dist. 1949).....	5, 6
<i>Day v. Middletown-Monroe City School District</i> , 12 th Dist. Butler No. CA99-11-186, 2000 WL 979141 (July 17, 2000).....	7, 8
<i>Doe v. Dayton City School Dist. Bd. of Edn.</i> (1999), 137 Ohio App. 3d 166, 738 N.E. 2d 390	10
<i>Doe v. Jackson Local School Dist.</i> , 5 th Dist. No. 2006 CA00212, 2007-Ohio-3258, 2007 WL 1840864	10
<i>Doe v. Marlinton Local School Dist. Bd. of Edn</i> , 122 Ohio St.3d 12, 2009-Ohio-1360, 907 N.E.2d 706	9, 10
<i>Glover v. Dayton Public Schools</i> , 2 nd Dist., Montgomery No. 17601, 1999 WL 958492 (August 13, 1999).....	8
<i>Middletown v. Campbell.</i> , 69 Ohio App.3d 411, 590 N.E.2d 1301 (12 th Dist. 1990).....	9, 10
<i>Sallee v. Watts</i> , 1 st Dist. Hamilton No. C-130122, 2014-Ohio-717.....	8
<i>State ex rel Haines v. Rhodes</i> , 195 Ohio St. 165, 151 N.E.2d 716 (1958).....	8
<i>Wilson v. Stark Cty. Dept. of Human Services</i> , 70 Ohio St.3d 450, 639 N.E.2d 105 (1994).....	6

Statutes

R.C. §2744.02(A)(1).....	11
R.C. §2744.02(B)(1)	5, 7, 9, 10, 11
R.C. §2744.03(A)(3).....	6
R.C. §4511.75(E).....	5, 7, 8, 9, 10, 11
G.C. 6307-73.....	10

INTRODUCTION

Defendant/Appellant Three Rivers Local School District (“Three Rivers”) asks this Court to address three propositions of law in this appeal relating to a school district’s immunity under R.C. 2744. All of the propositions of law relate to whether a violation of R.C. 4511.75(E) constitutes the negligent operation of a motor vehicle.

Two questions come into play when determining whether a violation of R.C. 4511.75(E) abrogates governmental immunity of school district’s under the exception listed in R.C. 2744.02(B)(1). First, whether R.C. 4511.75(E) is violated when a school bus proceeds on its route after a student leaves the bus stop but does not cross to his/her residential side of the street. Second, whether R.C. 4511.75(E) is a statute describing conduct involving the supervision of students or conduct involving the operation of a motor vehicle. As demonstrated by this case, before a court can answer whether R.C. 4511.75(E) abrogates governmental immunity, there must be an initial determination of Three River’s bus drivers’ duties under the law. Answering the question whether Three Rivers violated R.C. 4511.75(E) requires the Court to examine the legal standard and parameters giving rise to liability under the alleged violation.

In Appellee’s answer brief, she - as well as amicus, The Ohio Association of Justice (OAJ) - has argued at length R.C. 4511.75(E) is a strict liability statute involving the operation of a motor vehicle. Both briefs rely heavily on *Culwell v Brust*, 91 Ohio App. 309, 108 N.E.2d 173 (4th Dist. 1949). Such reliance is meritless as The First District directly asserted in oral argument *Culwell* is inapplicable to this case.

First, *Culwell* was decided before the adoption of governmental immunity and R.C. 2744.02(B)(1). Second, in *Culwell*, the driver stated he knew of the fact the student ran around behind the bus to cross the Highway rather than crossing in front of the bus but decided to start

moving the bus anyway. *Culwell* at 313. In the case at hand, Ms. Krimmer did all she could to catch Appellee's attention and not until it was evident that Appellee was in a place of safety did she proceed on the bus route. T.d. 57 at 13. Moreover, Ms. Krimmer immediately called Base 2 and informed them of the situation and Appellee's location. T.d. 57 at 16. Finally, in *Culwell* the bus had just started moving while oncoming traffic approached and only made it 40 feet before the student was struck by a car traveling in the opposite direction *Culwell* at 312. In our case, Appellee did not attempt to cross the street until Ms. Krimmer was several blocks away at the third stop and was struck by a vehicle traveling the same direction as the bus. T.d. 58 at 40.

The key to the Fourth District's finding of negligence was the fact the driver knew a student was attempting to cross behind the bus with oncoming traffic, and still started the bus. The Court explained "It is difficult to conceive of anything that could have been more dangerous than for the defendant to place the bus in motion when traffic was approaching, before this child 'reached a place of safety.'" *Culwell* at 313. In contrast, Three Rivers' driver started the bus only after Appellee was out of her control and in a place of safety and the bus was absent when a vehicle, traveling the same direction of the bus, struck Appellee as she attempted to cross the street.

It is equally important to make clear what this case is not about. Appellant's Proposition of Law IV is asking the Court to adopt a rule that school districts must require parents or adults to be present at the bus stop for children of tender years. Three Rivers' policy is not at issue in this appeal. Further, a political subdivision is immune from liability if the action or failure to act that causes the claim of liability was made with respect to policy-making, planning or enforcement powers. R.C. 2744.03(A)(3). Also not present in this appeal is if the preclusion of recovery in this case is against public policy. First, the law is clear; precluding recovery under

governmental immunity is not against public policy. Second, Appellee has already recovered in this case for her uninsured policy limits.

What is at issue here is what constitutes a violation of R.C. 4511.75(E) and if that violation involves the supervision of students or the operation of a motor vehicle.

REBUTTAL ARGUMENT

A. R.C. 4511.75(E) should be limited to a reasonable interpretation involving the nexus of the school bus and injury.

Three Rivers 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. Ohio courts have ruled R.C. 4511.75(E) does not establish the “negligent operation of any motor vehicle” without the bus being present at the time the injury occurs. *Day v. Middletown-Monroe City School District*, 12th Dist. Butler No. CA99-11-186, 2000 WL 979141 *4 (July 17, 2000).

In Three River’s Second Proposition of Law, the Merit Brief expressed a multitude of possible scenarios which exists if a bus driver is bound to wait indefinitely for discharged students to cross the street.

Without citation to any authority, OAJ argues that cases such as this do not expose school districts to financial liability. It is unclear where this assertion comes from as this Court has previously expressed “the manifest statutory purpose of R.C. Chapter 2744 is the preservation of the fiscal integrity of political subdivisions.” *Wilson v. Stark Cty. Dept. of Human Services*, 70 Ohio St.3d 450, 639 N.E.2d 105 (1994). It is undisputed Three Rivers is a political subdivision entitled to immunity. Further, OAJ argues the no-win scenario bus drivers face based on a strict interpretation of R.C. 4511.75(E) is based on Three Rivers’ imagination. The consequences discussed by Three Rivers arise from the First District’s opinion which states “So a responsible driver in this situation is placed in a dilemma: either remain parked indefinitely with all the other

children on the bus, or proceed to take the other children home and violate the statute. As illogical as this result may be, it is not within the authority of this court to contenance any other.” *Sallee v. Watts*, 1st Dist. Hamilton No. C-130122, 2014-Ohio-717 ¶13.

The First District went on to state “it is difficult to imagine such situations are exceedingly rare.” Even the court recognized illogical results would be common if R.C.4511.75(E) was not limited with a reasonable standard. **This Court has long held “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*, 195 Ohio St. 165, 151 N.E.2d 716 (1958).

A multitude of ways exists to avoid the illogical result of the First District in this case and other similar situations; most notably using a reasonable standard to interpret the statute. This would limit violations to entities such as Three Rivers to situations in which injuries occur within the nexus of the school bus. The Second and Twelfth Districts have limited abrogating governmental immunity to circumstances in which injuries occur during the physical discharge from the bus or when the bus is present. *See Glover v. Dayton Public Schools*, 2nd Dist., Montgomery No. 17601, 1999 WL 958492 (August 13, 1999); *Day v. Middletown-Monroe City School District*, 12th Dist. Butler No. CA99-11-186, 2000 WL 979141 (July 17, 2000).

Appellee argues the statute leaves no room for such an interpretation claiming R.C. 4511.75(E) creates negligence per se. Appellee argues that statute is designed to protect against the exact type of harm caused in this case; “being hit by a vehicle coming from the opposite direction.” *See Sallee Merit Brief* p 12. This is a misstatement of the facts. Appellee got off Three Rivers’ bus, ran up the road outside the scope of authority of the driver and after the bus was away from the area attempted to cross the street and was struck by a vehicle traveling the same direction of the bus. Similar conditions create the possibility that even if a school bus

remains parked a car could strike a student. In that situation, just as this, it would be illogical to hold a school district, such as Three Rivers, responsible under R.C. 4511.75(E) when the injury does not occur in the nexus of the bus.

B. R.C. 4511.75(E) is a statute mandating a bus driver's supervision.

Even if R.C. 4511.75(E) unequivocally prohibits school bus drivers from leaving a bus stop until a discharged child crosses to his/her residential side of the street, any violation is a failure to supervise. This Court has 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. *Doe v. Marlinton Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 12, 18, 2009-Ohio-1360, 907 N.E.2d 706. While some of the bus drivers' responsibilities may be associated with the operation of a motor vehicle, not all supervision duties while transporting students constitute the operation of a school bus. *Id.* at 19.

The statute was designed to supervise the students to safety not to keep other drivers safe by operating the bus in a particular manner. The purpose must be evaluated to determine the duty mandated by R.C. 4511.75(E). Appellee points out the statute was legislated to "protect children who are boarding and leaving school buses, particularly those who are at risk when crossing in front of school buses and other vehicles on the road." *Middletown v. Campbell* (1990) 69 Ohio App. 3d 411, 416, 590 N.E.2d 1301. However, Appellee is distracted by the location of the statute claiming the fact the title of chapter 4511 is "Traffic Laws - Operation of Motor Vehicles" is sufficient proof that the statute sets forth rules governing the operation of motor vehicles. *See* Sallee Merit Brief p7. Appellee travels further from the purpose of the statute by seeking the definition of operate in an effort to connect the act of starting the bus described in R.C. 4511.75(E) to the operation of a motor vehicle in R.C. 2744.02(B)(1).

However, it is unnecessary to seek such information to discover the purpose of R.C.

4511.75(E). The statute states

“No school bus driver shall start the driver's bus until after any child, person attending programs offered by community boards of mental health and county boards of developmental disabilities, or child attending a program offered by a head start agency who may have alighted therefrom has reached a place of safety on the child's or person's residence side of the road.”

The duty imposed is not focused on the operation of a motor vehicle, but rather supervising a child to a place of safety. R.C. 4511.75(E) was enacted to place a duty upon bus drivers to make certain children reach a place of safety. *Middletown* at 416. The duty placed is a duty to watch and help children across the street. What part of R.C. 4511.75(E) regulates how to operate, where does the legislature explain how the bus driver shall start, at what speed or at what acceleration? The statute is void of any such instruction because the legislators were creating a supervision regulation not a law on how to operate the bus. The use of the words “start the driver’s bus” is simply one parameter of the supervision. It is simply the arbitrary point at which supervision ends. The legislators lay out the timeframe in which a bus driver’s duty to supervise a discharged child exists: from the point the student exits until the student reaches his side of the road. Once the child is in such a place, the drivers’ duty to supervise that child ends.

A review of the legislative history further demonstrates the duty is to supervise students. The prior mandate, G.C. 6307-73 limited the supervision until the point a student “reached a place of safety.” The current provision simply extends the time a driver must supervise the students off of the bus. The reason is clear, bus drivers previously could leave students immediately after discharge, but for safety the legislature extended the duty to supervise.

While a failure to fulfill this duty may occur, the failure to fulfill this duty does not abrogate governmental immunity. This Court found that the immunity exception did not apply to

supervision. In *Doe v. Marlinton Local School Dist. Bd. of Edn.*, this Court found the exception in R.C. 2744.02(B)(1) did not apply when a first-grade student was sexually molested on a school bus because the exception “pertains only to negligence in driving.” *Doe v. Marlinton Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 12, 18, 2009-Ohio-1360, 907 N.E.2d 706. Just as a student’s injury that occurs as a result of the failure to supervise while riding a bus does not abrogate immunity through R.C. 2744.02(B)(1), the failure to supervise a student across the street does not involve the negligent operation of a motor vehicle and is strictly pupil management. In *Doe v. Jackson Local School Dist.*, 5th Dist. No. 2006 CA00212, 2007-Ohio-3258, 2007 WL 1840864, the court noted that while pupil management may well be part of the driver’s responsibility, **it is a responsibility that is separate and distinct from that of the operation of the motor vehicle.**

In *Doe v. Dayton City School Dist. Bd. of Edn.* (1999), 137 Ohio App. 3d 166, 738 N.E. 2d 390, the court rejected an argument that the alleged negligent supervision of students on a school bus, which failed to prevent a sexual assault of a minor student, amounted to negligent operation of a motor vehicle. The court reasoned that the student suffered harm as a result of an external factor, the conduct of another student, and that the harm was not directly traceable to the driver’s operation of the bus, as required by R.C. § 2744.02 (B)(1). Like in *Dayton City, supra.*, in our case Plaintiff suffered harm as a result of an external factor, the conduct of the other driver, and that the harm was not directly traceable to the driver’s operation of the bus. Whether the bus was moved or not, the accident still could have happened. The only possible negligence directly traceable to the bus driver was the failure to supervise the Plaintiff crossing the street to her residence side of the road.

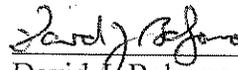
The plain language of R.C. 2744.02(B)(1)’s exception to a school district’s immunity

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

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. Three Rivers Local School District is entitled to immunity under R.C. 2744.02(A)(1) and no exception to that immunity applies.

Respectfully submitted,



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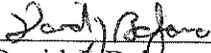
CERTIFICATION

I hereby certify that a copy of the foregoing has been served by ordinary U.S. Mail upon the following this 22nd day of January, 2015.

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