

SUPREME COURT OF OHIO

CARLA DUNN, : **No. 2015-1242**
 :
Plaintiff-Appellant, :
 :
vs. : ***On Appeal from the Licking County***
 : ***Court of Appeals, Fifth Appellate***
 : ***District, Case No. 14 CA 0101***
 :
LICKING COUNTY HUMANE :
SOCIETY, :
 :
Defendant-Appellee. :

**MEMORANDUM OF APPELLEE, LICKING COUNTY HUMANE SOCIETY,
IN OPPOSITION TO JURISDICTION**

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I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Appellant, Carla Dunn, provides no legitimate basis for review. She premises her request for jurisdiction only on a fiction, namely that, if the Fifth District’s decision stands, thousands of Ohio pet owners will have no “remedy” or “recourse” if a county humane society seizes their pets. To make her case, Dunn presupposes a crisis wherein humane societies are, without strictures, seizing all of Ohio’s pets. But, even putting aside the specter of that mass seizure, Dunn’s position is fundamentally false. As an initial matter, county humane societies are not immune to suit for *equitable* relief. See R.C. 2744.02(A)(1). Thus, Ohio pet owners—should their pets be seized—can petition the court(s) to stop any adoption/euthanization and request return of their animals. Moreover, even if a pet owner fails to timely seek equitable relief, she nevertheless retains the ability to bring suit for damages against parties *other than the humane society*, including any establishments where her pets were “groomed” or “boarded” that contributed to or caused the seizure.

Dunn’s own case bears out these facts. She initially sought equitable relief from the Common Pleas Court of Licking County to halt the scheduled adoptions of “her” puppies by Licking County Humane Society (LCHS). But, by the time Dunn requested a temporary restraining order, LCHS had already effectuated adoptions of those puppies. Subsequently, Dunn amended her complaint to bring suit for damages. At the time of amendment, Dunn had a viable claim for damages against the breeder with whom she entrusted her adult dogs, and whose mistreatment of those dogs led to the seizure by LCHS. Rather than file suit against the breeder, however, Dunn brought claims against *only* LCHS—a party that was immune for damages as a matter of law under R.C. Chapter 2744. Thus, Dunn simply chose a dead end when filing suit, while ignoring a potentially viable path to recover damages based on the seizure of the puppies.

Ultimately, the fact that she ineffectually navigated this litigation does not somehow mean she had no “remedy” or “recourse”; it simply means she failed to sue the proper party to recover damages.

In addition, this Court need not clarify the law as to Dunn’s proposed issue for review. Four different Ohio appellate districts—the Third, Fifth, Sixth, and Ninth Districts—have already addressed the exact question presented to this Court. Dunn v. Licking County Humane Soc’y, 5th Dist. No. 14-CA-101, 2015-Ohio-2561, ¶49; City of Akron ex rel. Christman-Resch v. City of Akron, 159 Ohio App.3d 673, 686–87 (9th Dist. 2005); Earl v. Wood County Humane Soc’y, 6th Dist. No. WD-01-61, 2002-Ohio-3156, ¶10; Studer v. Seneca County Humane Soc’y, 3rd Dist. No. 13-99-59, 2000-Ohio-1823, 2000 Ohio App. LEXIS 1974, *10–12; see also Patton v. Wood County Humane Soc’y, 154 Ohio App.3d 670, 677–78, Appx. A (6th Dist. 2003). All four of those courts have reached the exact same conclusion: when a county humane society authorizes the adoption of seized abused/neglected animals, it is engaged in a governmental function for the purposes of R.C. Chapter 2744’s immunity provisions. See id.

II. APPELLANT’S PROPOSITION OF LAW IS POORLY TAKEN

Dunn’s claim against LCHS has no merit. It is undisputed LCHS is generally immune from civil liability for damages under the first prong of Ohio’s political subdivision immunity statute, R.C. 2744.02(A)(1). Dunn, 2015-Ohio-2561, ¶36. Moreover, Dunn’s single “proposition of law” is a non-starter; the statutory language in R.C. Chapter 2744, unanimous case law, and public policy all dictate a county humane society engages in a governmental function when it authorizes the adoption of seized abused/neglected animals. Accordingly, the proffered “proprietary function” exception to political subdivision immunity does not apply to LCHS in this case, and LCHS is immune as a matter of law. See R.C. 2744.02(B)(2)

(“[P]olitical 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”).

First, per the statutory definitions at R.C. 2744.01, a county humane society engages in a governmental function when it authorizes the adoption of seized abused/neglected animals. There are five sufficient and *independent* bases in those statutory definitions under which LCHS’s authorization of adoption of the subject puppies qualifies as a “governmental function.” R.C. 2744.01(C)(1)(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”); 2744.01(C)(1)(b) (“[a] function that is for the common good of all citizens of the state”); 2744.01(C)(1)(c) (“[a] function that promotes or preserves the public peace, health, safety or welfare” and “involves activities that are not engaged in or not customarily engaged in by nongovernmental persons”); 2744.01(C)(2)(i) (a function that involves “[t]he enforcement or nonperformance of any law”); 2744.02(C)(2)(x) (“[a] function the general assembly mandates a political subdivision to perform”) If, at a minimum, only one of those five provisions applies, LCHS’s authorization of adoption is still, by definition, a “governmental function” under R.C. Chapter 2744.

Second, as discussed above, Ohio courts unanimously hold a county humane society engages in a governmental function when it authorizes the adoption of seized abused/neglected animals. Dunn, 2015-Ohio-2561, ¶49; City of Akron, 159 Ohio App.3d at 686–87; Earl, 2002-Ohio-3156, ¶10; Studer, 2000 Ohio App. LEXIS 1974, *10–12; see also Patton, 154 Ohio App.3d at 677–78, Appx. A. Even Dunn agrees a county humane society is *ordinarily* immune for authorizing said adoptions. But, in an attempt to distinguish the unanimous case law, she

claims—without support—LCHS is not immune *in this case* because Dunn was not “the abuser” of the puppies. The Fifth District rightly rejected this argument, holding (1) “the entitlement of immunity pursuant to R.C. Chapter 2744 is not dependent upon the status of party raising the tort claim” and (2) “Dunn’s knowledge [of wrongdoing] is not relevant to the issue of whether LCHS was engaged in a governmental or proprietary function.” Dunn, 2015-Ohio-2561, ¶¶47–48. Indeed, the entire structure of political subdivision immunity is premised upon the idea that a political subdivision is immune for engaging in certain activities regardless of the meritorious nature, or lack thereof, of the plaintiff’s claims. See id., ¶35 (“By asserting an immunity defense, the defendant does not allege that there was no negligence. The defendant is asserting that it is protected from liability for negligence by reason of R.C. Chapter 2744.”). Adherence to that premise is the only way the immunity statute can serve its purpose of providing “early resolution” and preventing unnecessary exhaustion of “time, effort, and expense.” Riscatti v. Prime Props. Ltd. P’ship, 137 Ohio St.3d 123, 126–27 (2013).

Third, public policy supports finding a county humane society engages in a governmental function when authorizing the adoption of seized abused/neglected animals. It is undisputed that a county humane society is immune for *seizing* abused/neglected animals. But, if—as Dunn suggests—humane societies are not *also* immune for their decisions regarding *adoption/euthanization* of abused/neglected animals, then immunity for the original seizure of the animals will, in most cases, be meaningless; a humane society will ultimately be subject to a conversion lawsuit for seizure of an animal *in any case it does not return the animal to its original or purported owner*. While the humane society may prevail as to the considerable majority of these lawsuits, the necessity of defending against these claims undermines the purpose of political subdivision immunity.

III. CONCLUSION

For the reasons set forth herein, LCHS respectfully requests this Court deny Dunn's request for jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 24th day of August, 2015, via electronic and/or regular U.S. mail, postage prepaid upon the following:

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