

IN THE SUPREME COURT OF OHIO

RICKY ALLEN BAKER & SHARON)	CASE NO. 2014-2079
MARIE BAKER, Individually and as)	
Administrators of the Estate of)	
KELLI MARIE BAKER,)	
)	
Appellees,)	
)	
vs.)	Jurisdictional Appeal from the
)	Wayne County Court of Appeals,
COUNTY OF WAYNE, et al.,)	Ninth Appellate District
)	Court of Appeals
Appellants.)	Case No. 13 CA 0029

**MEMORANDUM IN OPPOSITION TO MOTION FOR
RECONSIDERATION ON MERITS**

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**MEMORANDUM IN OPPOSITION TO MOTION
FOR RECONSIDERATION ON THE MERITS**

The appellees have filed a motion seeking reconsideration of the Court’s April 19, 2016, decision on the merits. Reconsideration on the merits is generally confined to the correction of decisions “which, upon reflection, are deemed to have been made in error.” E.g., *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St. 3d 379, 2002-Ohio-4905, ¶5. Moreover, we know from S. Ct. Prac. R. 18.02(B) that a motion for reconsideration “shall not constitute a reargument of the case.” This case has been thoroughly argued and thoughtfully decided, and nothing within the Court’s opinion suggests that the case has been decided in error. Consequently, the motion for reconsideration should be denied.

The judgment in this case carries out the intent of the General Assembly when it fashioned the statutory definition for “public road” set out in R.C. 2744.01(H). The Court has reinforced its prior ruling in *Howard v. Miami Twp. Fire Dept.*, 119 Ohio St. 3d 1, 2008-Ohio-2792, ¶26, wherein the Court acknowledged that the General Assembly’s amendments including R.C. 2744.02(B)(3) were “a deliberate effort to limit political subdivisions’ liability for injuries and deaths on their roadways.” The legislature’s restricted definition for “public road” was fashioned as part of the subject amendments dating back to 2003. *Baker v. Wayne County*, 2016-Ohio-1566, ¶13.

Throughout the briefing of this case it has been clearly demonstrated that white edge lines were never required on CR 44 (a low-volume county collector) and the surface of CR 44 had been fully restored by full-width re-paving before the accident in question. Thus, the “public road” was not, in some fashion, out of repair at the time of the accident. Based upon the limiting definition of R.C. 2744.01(H), the Court has rationally and correctly decided that any condition of the berm or shoulder (beyond the limit or dimension of the surface paved for vehicle travel) does not trigger the immunity exception found in R.C. 2744.02(B)(3). The void complained of this case – an edge drop above the berm – is just such a condition that does not

trigger the immunity exception. The Court has correctly determined that “when Baker’s tire traveled off the edge of the pavement, it left the public road and dropped onto the berm or shoulder.” “The General Assembly excluded berms and shoulders from the definition of public road.” *Baker v. Wayne County*, 2016-Ohio-1566, ¶23. In reaching such conclusion, the Court followed well-settled law and established, usual and ordinary meanings for “berm” and “shoulder.” *Id.*, ¶21.

This application of law is without regard to the source of the condition within, about or above the location of the berm or shoulder. This case dealt with a condition of the berm after the process of re-paving had restored the traveled portion of the roadway. A void (edge drop beyond the limit of the pavement) within or above the berm or shoulder of a roadway may be produced by erosion or some other deterioration or action, exposing what the appellees wish to label the edge of the pavement. Under the latter scenario, the void within the berm or shoulder area will still have a dimension, as the dissent has suggested; but the General Assembly has expressly limited liability exposure for a political subdivision for any condition of the berm or shoulder area, regardless of how the condition or void may come about. The General Assembly has done so by expressly excluding from the applicable definition of “public road” berms, shoulders, rights of way and non-mandatory traffic control devices. None of the temporary traffic control signs to which the appellees once again allude were mandatory, as already addressed in the record, briefing and argument. The appellees’ efforts to reargue this case through the mechanism of a motion for reconsideration on the merits is not authorized and is unwarranted. *State ex rel. Shemo v. Mayfield Hts.*, supra at ¶9.

Wayne County did not negligently fail to keep CR 44 “in repair.” To the contrary, the “public road,” as defined for purposes of R.C. Chapter 2744 had just been resurfaced and was free from any deterioration. Neither the berm nor the edge drop (a void beyond the limit of the pavement and above the berm) on CR 44 are recognized as part of the “public road” for purposes of immunity under R.C. Chapter 2744.

Consequently, the Court has reasonably and fairly decided this case, and its opinion was not made in error.

WHEREFORE, appellants, County of Wayne and Wayne County Board of Commissioners (and their unnamed employees), respectfully request that the motion for reconsideration on the merits be denied.

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing memorandum in opposition to motion for reconsideration was served by ordinary U.S. mail this 9th day of May, 2016, to:

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