

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLINTON COUNTY

JEFFREY SANTEL, et al.,	:	
Plaintiffs-Appellees,	:	CASE NO. CA2010-10-018
- vs -	:	<u>OPINION</u>
	:	4/25/2011
TIMOTHY C. RECTOR, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case No. CVH20090511

Jason A. Showen, 324 East Warren Street, Lebanon, Ohio 45036, for plaintiffs-appellees,
Jeffrey and Christine Santel

Rendigs, Fry, Kiely & Dennis, L.L.P., Wilson G. Weisenfelder, Jr., One West Fourth Street,
Suite 900, Cincinnati, Ohio 45202, for defendants-appellants, Timothy C. Rector and Kelli
Hollon Rector

RINGLAND, J.

{¶1} Defendant-appellant, Kelli Hollon Rector, appeals from the Clinton County Court of Common Pleas decision denying her motion for summary judgment seeking governmental immunity pursuant to R.C. Chapter 2744 in a lawsuit initiated by plaintiffs-appellees, Jeffrey and Christine Santel. For the reasons outlined below, we affirm.

{¶2} Appellant, a special needs aide for the Blanchester Local School District, is

married to Officer Timothy C. Rector of the Hamilton Township Police Department. At all times relevant, Officer Rector was the canine handler of a police dog, Perro, owned by Hamilton Township. It is undisputed that Officer Rector was required to keep Perro at the couple's Clinton County home when not on duty and that appellant assisted her husband in caring for the dog while it was in their home.

{¶3} On the morning of May 30, 2008, after Officer Rector returned home from duty with Perro, appellant let the dog outside into their unfenced backyard to relieve itself. At that time, Mr. Santel was walking by the house on the opposite side of the street with his dog, Sunny. According to Mr. Santel's deposition testimony, after Perro came outside, the dog "quickly" walked towards him and bit him and his dog causing them to suffer injury.

{¶4} On June 24, 2009, the Santels filed suit against appellant and Officer Rector alleging, among other things, negligence and strict liability pursuant to R.C. 955.28. After filing their answer, appellant and Officer Rector subsequently filed a motion for summary judgment seeking governmental immunity pursuant to R.C. Chapter 2744.

{¶5} In its September 16, 2010 decision, the trial court granted summary judgment to Officer Rector, "a government employee acting within the scope of his employment," after finding him immune from liability "because none of the three statutory exceptions to governmental employee immunity granted in §2744.03(A)(6) a-c apply to the facts of this case." However, the trial court denied summary judgment to appellant after finding there was "not enough evidence * * * to determine whether [she] was an employee or agent of the Hamilton Township Police Department."

{¶6} Appellant now appeals from the trial court's decision denying her motion for summary judgment, raising one assignment of error for review.

{¶7} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY DENYING STATUTORY IMMUNITY TO HER."

{¶8} In her single assignment of error, appellant argues that the trial court erred by denying her governmental immunity for the evidence "clearly established [her] as an agent in the care and maintenance of the Township's K-9." We disagree.

{¶9} Initially, we note that a trial court's decision denying a motion for summary judgment is generally not a final appealable order, and therefore, not subject to immediate appeal. *Klein v. Portage Cty.* (2000), 139 Ohio App.3d 749, 751-752, citing *Celebrezze v. Netzley* (1990), 51 Ohio St.3d 89. However, when a trial court denies a motion in which a political subdivision or its employee seeks immunity under R.C. Chapter 2744, such as the case here, "that order denies the benefit of an alleged immunity and is therefore a final, appealable order pursuant to R.C. 2744.02(C)." *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, syllabus. Accordingly, pursuant to *Hubbell*, the trial court's decision denying appellant's motion for summary judgment was a final appealable order subject to an immediate appeal. *Lucchesi v. Fischer*, 179 Ohio App.3d 317, 2008-Ohio-5934, ¶16.

{¶10} Summary judgment is a procedural device used to terminate litigation when there are no issues in a case requiring a formal trial. *Barnett v. Beazer Homes Invests., L.L.C.*, 180 Ohio App.3d 272, 2008-Ohio-6756, ¶12. A trial court may grant summary judgment only when: (1) there is no genuine issue of any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence submitted can only lead reasonable minds to a conclusion which is adverse to the nonmoving party. See Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. A material fact is one that would affect the outcome of the suit under the applicable substantive law. *Uhl v. Thomas*, Butler App. No. CA2008-06-131, 2009-Ohio-196, ¶8, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505. In determining whether a genuine issue of material fact exists, the evidence must be construed in the nonmoving party's favor. *Walters v. Middletown Properties Co.*, Butler App. No. CA2001-10-249, 2002-Ohio-3730,

¶10.

{¶11} This court reviews de novo the trial court's summary judgment decision on immunity grounds. *Winkle v. Zettler Funeral Homes, Inc.*, 182 Ohio App.3d 195, 2009-Ohio-1724, ¶15. In applying the de novo standard, we are required to "us[e] the same standard that the trial court should have used, and * * * examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Bravard v. Curran*, 155 Ohio App.3d 713, 2004-Ohio-181, ¶9, quoting *Brewer v. Cleveland Bd. of Edn.* (1997), 122 Ohio App.3d 378, 383.

{¶12} Generally, pursuant to R.C. 2744.03(A)(6), an employee of a political subdivision is immune from liability in a civil action for claims arising out of the employee's official duties. See *Curry v. Blanchester*, Clinton App. Nos. CA2009-08-010, CA2009-08-012, 2010-Ohio-3368, ¶29; *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 452, 1994-Ohio-394. Immunity, however, is not available to an individual who is not an "employee" of a political subdivision. An "employee," as defined by R.C. 2744.01(B), "means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision." "Employee," therefore, "has a broad meaning and includes officials or persons who act on behalf of [a political subdivision] in a representative capacity[.]" *Crossley v. Esler* (Nov. 17, 1994), Franklin App. No. 94APE04-497, 1994 WL 649962, at *2.

{¶13} In this case, and as noted above, it is undisputed that appellant assisted her husband, a canine handler with the Hamilton Township Police Department, in caring for Perro, a police dog, while it was in their home. However, while appellant may have cared for the dog with "the knowledge and consent" of her husband as stated in her affidavit, there is nothing in the record to indicate Officer Rector had the authority to authorize appellant to act

on behalf of Hamilton Township in such a manner. Moreover, the record is devoid of any evidence that appellant was acting with the assent, either express or implied, of Hamilton Township. See *Lanham v. Franklin Twp.*, Clermont App. Nos. CA2002-07-052, CA2002-08-068, 2003-Ohio-2222, ¶¶21-22 (classifying individual as an "employee" of township where uncontroverted evidence indicated he acted with the assent of township board of trustees). In turn, just as the trial court found, and for which we agree, the record does not contain sufficient evidence to show appellant was "authorized to act" on behalf of Hamilton Township in caring for the dog while it was in their home. Therefore, because a genuine issue of material fact remains as to whether appellant was an "employee" as defined by R.C. 2744.01(B), the trial court did not err in denying summary judgment to appellant as it relates to the Santels' claims against her. Accordingly, appellant's sole assignment of error is overruled.

{¶14} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.

[Cite as *Santel v. Rector*, 2011-Ohio-1996.]