



Scope of Political Subdivision Immunity Further Defined in Two Recent Ohio Supreme Court Decisions

by Albin Bauer II and Karen E. Wabeke

Traditional public school districts, community schools, cities, counties, townships and other Ohio political subdivisions are granted immunity from tort liability under most, but not all, circumstances. Determining whether immunity applies in a particular situation is the subject of a large and growing body of case law, joined recently by two new Ohio Supreme Court decisions illustrating that common law theories for abrogating sovereign immunity are no longer available to political subdivisions.

Ohio law starts with a presumption that all actions by a political subdivision are protected by a general blanket of immunity from tort liability. This general grant of immunity provides that a political subdivision is not liable in a civil action for injury, death or loss to person or property incurred while performing a governmental or proprietary function. However, a plaintiff may overcome this immunity by showing one of five exceptions applies to the government's conduct. These exceptions are:

1. negligent operation of a motor vehicle.
2. negligent conduct of employees while carrying out a proprietary function.
3. a municipality's failure to keep roads and sidewalks free from nuisance.
4. injury or loss that occurs on or within buildings used for governmental functions and is caused by the negligence of the municipality's employees.
5. any other situation in which liability is expressly imposed by the Ohio Revised Code.

If the plaintiff demonstrates that one of the five exceptions to governmental immunity applies, the political subdivision may still be able to revive its immunity by proving one of seven statutory defenses set forth in Section 2744.03(A) of the Ohio Revised Code.

Two recent Ohio Supreme Court decisions have further defined the scope of immunity offered to political subdivisions under state law. In *Rankin v. Cuyahoga County Dept. of Children & Family Services*, a minor child (D.M.) was sexually assaulted by her father during a supervised visit while in the custody of the Department of Children & Family Services (DCFS). D.M.'s mother and grandmother subsequently filed a civil complaint against DCFS alleging that employees had breached the duty they owed to D.M. by failing to protect her from sexual abuse. In assessing the claim, the Court followed the three-step analysis described above. First, it noted the chapter explicitly provides that a political subdivision is engaged in a governmental function when operating a family or children's services department. The Court then found that none of the five exceptions applied in the case at hand. Since immunity remained in place, there was no need for the Court to undertake the third step of analysis and consider the reinstatement provisions. Attorneys for D.M.'s mother and grandmother argued that a special relationship existed between DCFS and D.M., and that based on that special relationship the reckless actions undertaken by DCFS employees were sufficient to divest the political subdivision of immunity. Although the appellate court was convinced by this argument, the Supreme Court held that the lower court erred in considering an exception to immunity that was not provided for in the Ohio Revised Code.

On the same day that it decided *Rankin*, the Supreme Court of Ohio also applied the three-step political subdivision immunity analysis in *O'Toole v. Denihan* to find that the Cuyahoga County Department of Children and Family Services was immune from suit. In that case, Sydney, a four year old child, was killed by her mother after DCFS employees investigating a report of possible abuse determined that leaving the child with the mother under a "safety plan" rather than removing her from the mother's home was appropriate. The first four exceptions did not apply. The appellee argued that civil liability is expressly imposed on political subdivisions under Ohio's criminal child-endangering statute. Statute 2919.22 states that "[n]o person, who is the parent, guardian, custodian, person having custody, or control, or person in loco parentis of a child under eighteen years of age ... shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support." The Court held that this statute only applied to persons, and not to political subdivisions and their employees. Therefore, the Court found that DCFS was immune from suit and dismissed the suit.

These cases certainly suggest that the Supreme Court of Ohio is currently committed to a strict construction of the state's political subdivision immunity statute.

For more information on these cases, please contact the authors at our Toledo office. Information about the authors appears on the following page.

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Background Check

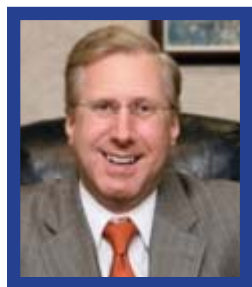
featuring

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Albin Bauer II joined Eastman & Smith in 1993 and has been a member of the Firm since 1999. He and his wife Veronica have a son, also named Albin, who will be a senior at Penta Career Center studying automotive technology. Mrs. Bauer is a former teacher.

Prior to joining Eastman & Smith, Mr. Bauer worked seven years for General Motors in various positions including in quality control and metallurgy. Soon after joining the Firm, he and his wife built their dream home using their own sweat equity to construct the floor joists, roof rafters and everything that goes in between.

Recently, Mr. Bauer indulged his interest in the early auto industry by purchasing a 1912 Ford Model T.



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