

1 Fahnbulleh, Appellant, v. Strahan; City of Columbus et al., Appellees.

2 [Cite as Fahnbulleh v. Strahan (1995), ____ Ohio St.3d ____.]

3 Political subdivisions -- Tort liability -- R.C. 2744.02(B)(1) is constitutional.

4 R.C. 2744.02 (B)(1) is a constitutional exercise of legislative authority which

5 does not violate the guarantees of equal protection of the

6 Ohio and United States Constitutions.

7 (No. 94-672 -- Submitted April 19, 1995 -- Decided September 13,

8 1995.)

9 Appeal from the Court of Appeals for Franklin County, No. 93AP-956.

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11 On October 17, 1992, plaintiff-appellant, Duraman Fahnbulleh, was

12 injured when his automobile was struck by a fire truck belonging to the

13 Columbus Division of Fire and operated by appellee Scott Strahan. Appellant

14 was stopped at a stop sign when the emergency vehicle made an improper left

15 turn at the intersection and struck appellant's vehicle. Appellees, the city of

16 Columbus and Scott Strahan, claimed immunity pursuant to R.C. 2744.02.

1 Appellant contacted his uninsured motorist carrier, Leader National Insurance
2 Company, which denied uninsured motorists coverage, claiming the tortfeasors
3 were immune from liability.

4 On April 21, 1993, appellant brought suit against appellees alleging
5 ordinary negligence and also sought declaratory judgment against Leader
6 National Insurance for uninsured motorists coverage. The complaint did not
7 allege that Strahan was acting outside the scope of his employment, acting with
8 a malicious purpose, in bad faith, or in a wanton and reckless manner. Nor was
9 it alleged that the appellees were expressly liable pursuant to any other section
10 of the Revised Code.

11 The Franklin County Court of Common Pleas found that appellant had
12 failed to state a claim upon which relief could be granted against appellees, and
13 granted Leader National Insurance's motion for summary judgment, after
14 finding appellees' immunity precluded recovery of uninsured motorists
15 benefits.

The court of appeals affirmed the decision. After this court accepted the matter on July 13, 1994, appellant reached a settlement with Leader National Insurance on August 25, 1994, and filed a notice of voluntary dismissal as to Leader National Insurance.

The cause is before this court pursuant to the allowance of a discretionary appeal.

Barkan & Barkan Co., L.P.A., Neal J. Barkan and Daniel J. Allen, for
appellant.

Ronald J. O'Brien, City Attorney, and *Mary E. Johnson*, Assistant City Attorney, for appellees.

GWIN, J.

I

1 Appellant contends the court of appeals erred in affirming the trial
2 court's ruling on appellees' motion to dismiss, pursuant to Civ.R. 12(B)(6).
3 The trial court found that both appellees were immune from liability pursuant
4 to R.C. 2744.02. The appellate court cited *O'Brien v. Univ. Community*
5 *Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 71 O.O.2d 223, 327 N.E.2d
6 753, wherein this court held: "In order for a court to dismiss a complaint for
7 failure to state a claim upon which relief may be granted, it must appear beyond
8 doubt from the complaint that the plaintiff can prove no set of facts entitling
9 him to recovery." *Id.* at syllabus.

10 A complaint should not be dismissed for failure to state a claim merely
11 because the allegations do not support the legal theory on which the plaintiff
12 relies. Instead, a trial court must examine the complaint to determine if the
13 allegations provide for relief on any possible theory. See *Patriarca v. Fed.*
14 *Bur. of Investigation* (D.R.I 1986), 639 F.Supp. 1193. A court must construe
15 all material allegations in the complaint and all inferences that may be
16 reasonably drawn therefrom in favor of the nonmoving party. *Phung v. Waste*

1 *Mgt., Inc.* (1986), 23 Ohio St.3d 100, 23 OBR 260, 491 N.E.2d 1114. Thus, a
2 court must presume all factual allegations in the complaint are true for purpose
3 of the motion. *Bridges v. Natl. Eng. & Contracting Co.* (1990), 49 Ohio St.3d
4 108, 551 N.E.2d 163.

5 We agree with the court of appeals that appellant's complaint contains
6 no factual allegations that would remove appellees from the protection of R.C.
7 2744.03, which statute sets forth the defenses a political subdivision may use to
8 avoid liability in connection with governmental or proprietary functions. Thus,
9 unless the statute conferring immunity is unconstitutional, appellees are
10 immune from liability.

11 II

Appellant urges that R.C. 2744.02 is unconstitutional, and should be found void as violative of public policy as it is applied to this case.

Historically, the doctrine of sovereign immunity protected political subdivisions from liability. In Ohio, the doctrine of sovereign immunity as to a municipal corporation was judicially abolished in *Haverlack v. Portage Homes*,

1 *Inc.* (1982), 2 Ohio St.3d 26, 2 OBR 572, 442 N.E.2d 749. However, in
2 *Strohofer v. Cincinnati* (1983), 6 Ohio St.3d 118, 6 OBR 178, 451 N.E.2d 787,
3 we held that sovereign immunity could be restored to a municipality by statute.
4 Thereafter, the General Assembly enacted R.C. 2744.02(B), which provides, in
5 pertinent part:

6 “Subject to sections 2744.03 and 2744.05 of the Revised Code, a
7 political subdivision is liable in damages in a civil action for injury, death, or
8 loss to persons or property allegedly caused by an act or omission of the
9 political subdivision or of any of its employees in connection with a
10 governmental or proprietary function, as follows:

11 “(1) Except as otherwise provided in this division, political subdivisions
12 are liable for injury, death, or loss to persons or property caused by the
13 negligent operation of any motor vehicle by their employees upon the public
14 roads, highways, or streets when the employees are engaged within the scope
15 of their employment and authority. The following are full defenses to such
16 liability.

1 “***

2 “(b) A member of a municipal corporation fire department or any other
3 fire fighting agency was operating a motor vehicle while engaged in duty at a
4 fire, proceeding toward a place where a fire is in progress or is believed to be in
5 progress, or answering any other emergency alarm and the operation of the
6 vehicle did not constitute willful or wanton misconduct[.]”

7 Appellant concedes that all legislative enactments enjoy a presumption
8 of constitutionality. *Hardy v. VerMeulen* (1987), 32 Ohio St.3d 45, 512 N.E.2d
9 626. Since R.C. 2744.02 involves neither a fundamental right nor a suspect
10 class, the statute is constitutional if it is reasonably calculated to advance a
11 legitimate governmental interest. *Fabrey v. McDonald Village Police Dept.*
12 (1994), 70 Ohio St.3d 351, 639 N.E.2d 31; *Strock v. Pressnell* (1988), 38 Ohio
13 St.3d 207, 527 N.E.2d 1235.

14 The court of appeals found two legitimate governmental interests that are
15 served by the grant of statutory immunity. First, the government encourages
16 rapid response of emergency vehicles and personnel. On balance, the harm to

1 an individual who may be injured is outweighed by the benefit to society in
2 general by quick response of emergency personnel. Whether the statute best
3 achieves its purposes is not the focus of a constitutional inquiry. Instead, we
4 must uphold the statute unless it is wholly irrelevant to the achievement of the
5 purpose. *Menefee v. Queen City Metro.* (1990), 49 Ohio St.3d 27, 29, 550 N.E.
6 2d 181, 183, citing *McGowan v. Maryland* (1961), 366 U.S. 420, 425, 81 S.Ct.
7 1101, 1105, 6 L.Ed.2d 393, 399. The second legitimate governmental interest
8 cited by the appellate court is the preservation of the financial soundness of the
9 political subdivision. The Supreme Court of the United States has held that
10 states have a valid interest in preserving the fiscal resources and integrity of
11 political subdivisions. See *Shapiro v. Thompson* (1969), 394 U.S. 618, 633, 89
12 S.Ct. 1322, 1330, 22 L.Ed.2d 600, 614. We have declared that the state may
13 make a rational determination to limit recovery in certain circumstances in
14 order to advance that legitimate state interest. *Menefee, supra*, at 29, 558
15 N.E.2d at 183; *Fabrey, supra*, at 353, 639 N.E.2d at 38.

1 Appellant maintains that if R.C. 2744.02 and 2744.03 are constitutional,
2 then innocent injured parties may be left without recourse under the law.

3 Section 16, Article I of the Ohio Constitution provides:

4 “All courts shall be open, and every person, for an injury done him in his
5 land, goods, person or reputation, shall have remedy by due course of law, and
6 shall have justice administered without denial or delay.

7 “Suits may be brought against the state, in such courts and in such
8 manner, as may be provided by law.”

9 The court of appeals noted the irony that appellant lives in a state that
10 mandates automobile liability insurance, but he must nonetheless personally
11 bear all the costs of the automobile collision where an at-fault motorist claims
12 governmental immunity. It may well be argued that any grant of immunity
13 necessarily impairs some individual’s right to seek redress in a court of law,
14 and thus treats some persons harshly. All too frequently, decisionmaking
15 requires difficult balancing of competing interests and equities. The Ohio
16 Constitution specifies that suits may be brought against the state “as provided

1 by law.” This language can only mean that the legislature may enact statutes to
2 limit suits if it does so in a rational manner calculated to advance a legitimate
3 state interest. In *Menefee*, we approved the use of limited classifications
4 devised to respond to reasonable concerns. This case also presents limited
5 immunity granted in specific situations of high public interest. The immunity
6 granted here in R.C. 2744.02 is narrowly tailored to restrict it to emergency
7 situations.

8 We note that here, the detrimental effect of the immunity statute is
9 blunted by the enactment of Am.Sub.S.B. No. 20,¹ so that future persons in
10 appellant’s circumstances will recover for their injuries.

11 We hold that R.C. 2744.02(B)(1) is a constitutional exercise of
12 legislative authority which does not violate the guarantees of equal protection
13 of the Ohio and United States Constitutions because its grant of limited
14 immunity of political subdivisions is rationally related to legitimate state
15 interest.

16 The judgment of the court of appeals is affirmed.

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Judgment affirmed.

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DOUGLAS, ACTING C.J., WRIGHT, RESNICK, F.E. SWEENEY and COOK, JJ.,

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concur.

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PFEIFER, J., dissents.

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W. SCOTT GWIN, J., of the Fifth Appellate District, sitting for MOYER,

6

C.J.

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FOOTNOTE:

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¹ The General Assembly amended R.C. 3937.18(A)(1) in

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Am.Sub.S.B. No. 20, effective October 20, 1994, which mandates that an

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insurance carrier honor uninsured motorists coverage to insured policy holders

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regardless of whether the alleged tortfeasor claims immunity. Accordingly, the

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General Assembly has resolved the issued raised in this cause. Hereafter,

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injured persons may recover from their insurance carriers if injured by a

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tortfeasor who is immune from liability.

1 PFEIFER, J., dissenting. Sovereign immunity -- the more they
2 explain it, the more I don't understand it.

3 There is no constitutional authority for sovereign immunity in
4 Ohio. Instead, Section 16, Article I of the Ohio Constitution
5 provides that each Ohioan has a right to remedy by due course of
6 law. That constitutional right extends to causes of action against
7 the state:

8 “Suits may be brought against the state, in such courts and in
9 such manner, as may be provided by law.”

10 Instead of abiding by that clear constitutional mandate, the
11 majority and the General Assembly take a trip “through the looking
12 glass,” claiming that what the Constitution means when it says that
13 suits may be brought against the state is that suits cannot be
14 brought against the state.

15 The Constitution means what it says -- that the General
16 Assembly may determine how and in what courts cases are brought

1 against the state. The General Assembly, for instance, could do for
2 the state's political subdivisions what it has done for the state --
3 create a special court like the Court of Claims to make litigation
4 more convenient for the state. The General Assembly does not have
5 the power, however, to foreclose a citizen's right to recover against
6 the state.

7 Another confounding theory underlying sovereign immunity is
8 that the people's constitutional right to sue the state is not "self-
9 executing." By that it is meant that the constitutional right to sue
10 the state does not arise until the General Assembly makes some
11 move to provide for that right. Thus, the General Assembly
12 supposedly has the power to limit a right that does not exist.

13 The rationalizations and legal fictions employed to prop up
14 this monarchical throwback are bewildering. The doomsaying is
15 particularly disturbing. The suggestion that without sovereign
16 immunity our communities would go broke is insulting. We expect

1 every person with an automobile to purchase insurance in this state.

2 Should the state be held to a lesser standard of responsibility than

3 we hold for small business, big business, drivers and homeowners?

4 Next comes the common claim that we need to protect the

5 integrity of rapid response emergency vehicles and personnel.

6 Emergency vehicles already have the benefit of a different standard

7 regarding traffic laws which should necessarily result in fewer

8 findings of negligence against rapid response units. Also,

9 sovereign immunity applies in other situations not as dramatic as a

10 firefighter rushing to save children trapped in a burning school. It

11 also applies to a political subdivision's operation of parks,

12 swimming pools, zoos, and golf courses. So when the caddymaster

13 at the local municipal golf course runs over your foot with a golf

14 cart, do not expect to recover from the state -- we cannot risk

15 depriving society of the benefit of golf carts.

1 Sovereign immunity is a remnant of history. Just because it is
2 historically based does not mean that it is legitimate. Its
3 illegitimacy is well exemplified in this case. Fahnbulleh, stopped
4 at a stop sign, gets slammed into by a negligently driven fire truck.
5 Since the city is immune from suit, Fahnbulleh's uninsured
6 motorists coverage does not apply, and he is left to pay for the
7 injuries for which he was not at fault. What's right about that?
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