

**HILLYER, APPELLEE, v. PAINESVILLE TOWNSHIP LOCAL BOARD OF
EDUCATION, APPELLANT, ET AL.**

[Cite as *Hillyer v. Painesville Twp. Local Bd. of Edn.*, 1999-Ohio-18.]

*Tort reform—Am.Sub.H.B. No. 350 unconstitutional in toto—Court of appeals’
judgment affirmed on the authority of State ex rel. Ohio Academy of Trial
Lawyers v. Sheward.*

(Nos. 98-387 and 98-546—Submitted September 15, 1999—Decided November 17,
1999.)

APPEAL from and CERTIFIED by the Court of Appeals for Lake County, No.
97-L-161.

*Friedman, Domiano & Smith Co., L.P.A., and Jeffrey H. Friedman, for
appellee.*

*Baran, Piper, Tarkowsky, Fitzgerald & Theis Co., L.P.A., and Marc A.
Lehotsky, for appellant.*

{¶ 1} The judgment of the court of appeals is affirmed on the authority of
State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451,
715 N.E.2d 1062.

DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

DOUGLAS and RESNICK, JJ., concur separately.

MOYER, C.J., COOK and LUNDBERG STRATTON, JJ., dissent.

COOK and LUNDBERG STRATTON, JJ., dissent.

DOUGLAS, J., concurring.

{¶ 2} For the reasons stated in my concurrence in *Burger v. Cleveland Hts.* (1999), 87 Ohio St.3d 188, 718 N.E.2d 912, I respectfully concur.

RESNICK, J., concurs in the foregoing concurring opinion.

MOYER, C.J., dissenting.

{¶ 3} I disagree with the decision of the majority, which affirms the judgment of the court of appeals on the authority of *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062. The parties in this case did not challenge the constitutionality of Am.Sub.H.B. No. 350, and, therefore, I believe that the case should have been decided on the issue raised. While it is true that if *Sheward* is to be followed in the instant case, the question whether R.C. 2744.02(C) as amended by Am.Sub.H.B. No. 350 should be applied retroactively to the instant case would be rendered moot, I would not want a vote of concurrence in this case to in any way suggest that I believe *Sheward* should necessarily be followed by this court in the future. Therefore, I dissent.

{¶ 4} It is not unusual for this court to summarily decide pending cases that raise legal issues dependent on those recently decided by the court in another case. It has been my past practice in such circumstances to follow the law announced in the earlier case, even where I dissented from the decision of the majority in that earlier case. My reason is based on my belief that once this court announces its opinion on an issue of law, that principle of law should be applied consistently to all persons similarly situated, whether or not I agree with that principle.

{¶ 5} Regrettably, I am compelled to make an exception to that practice in this case. In view of irregularities in the assumption of jurisdiction and the inclusion of inappropriate references to the conduct of the General Assembly in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, as is more fully described

in my dissent therein, I cannot agree that *Sheward* should control the outcome of this case.

COOK and LUNDBERG STRATTON, JJ., concur in the foregoing dissenting opinion.

LUNDBERG STRATTON, J., dissenting.

{¶ 6} This case involves issues identical to those raised in *Burger v. Cleveland Hts.* (1999), 87 Ohio St.3d 188, 718 N.E.2d 912. I dissented in *Burger*. Therefore, I adopt my dissent from *Burger* in its entirety in this case.

COOK, J., concurs in the foregoing dissenting opinion.
