[Cite as *Simmons v. Yingling*, 2011-Ohio-4041.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

MICHAEL SIMMONS, next friend of James M. Simmons, II, et al.,	:	
	:	CASE NO. CA2010-11-117
Plaintiffs-Appellants,	:	
	:	O P I N I O N
		8/15/2011
- vs -	:	
	:	
CONNIE YINGLING, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 09CV75191

Robert F. Croskery, 810 Sycamore Street, 2nd Floor, Cincinnati, Ohio 45202, for plaintiffs-appellants

Raymond H. Decker, 36 E. Seventh Street, Suite 2420, Cincinnati, Ohio 45202, for defendants-appellees, Mason City School Board, Kevin Bright, Cathy Weston and Andrew Hill

HENDRICKSON, J.

{¶1} Plaintiffs-appellants, Michael and Kelly Simmons, as next friends of James Michael Simmons, II, appeal a decision of the Warren County Court of Common Pleas granting summary judgment in favor of defendants-appellees, Mason City School Board, Kevin Bright, Cathy Weston, and Andrew Hill, in an action for injuries sustained by their 14-

year-old son, James Michael ("Michael"), in his physical education class. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} In May 2007, Michael was an eighth-grade student at Mason Middle School. Michael and his classmates were participating in a week-long roller skating course as part of their physical education class. The course was conducted in one of the school's gymnasiums, which had a hardwood floor coated with a polyurethane finish.

{¶3} The skating equipment and materials utilized in the class were furnished by SkateTime School Programs.[1] The record indicates that SkateTime has been in operation in the state of Ohio for approximately 13 years and used in approximately 300 to 400 schools each year. The program was adapted into the middle school's physical education curriculum in 2003, and was taught to both seventh-and-eighth-grade students.

{¶4} As part of the program, SkateTime provided the school with inline and quad roller skates. The skates had soft urethane wheels which were not damaging to indoor floor surfaces. In addition to the skates, SkateTime also provided wrist guards. Optional safety equipment, including helmets, knee pads, and elbow pads were available upon request. The school required the students to wear the skates and wrist guards provided by SkateTime. The students were also permitted to bring additional safety equipment from home to wear during class.

{¶5} SkateTime furnished an instructional video and manual to the school. These materials instructed students on general skating techniques, including how to skate forwards, backwards, turn corners, stop, and properly fall and stand in their skates. They also provided guidelines on skating safety, including the importance of keeping the students' hands to themselves while skating, and that all of the students skate in the same direction (either

1. SkateTime is not a party to this appeal.

forwards or backwards) at the same time. The guidelines in the video and manual were to be implemented at the discretion of the school and the teachers.

{¶6} Physical education teachers Cathy Weston and Andrew Hill combined their eighth-grade classes to teach the skating course. Michael was a student in Weston's class. They had an average combined class size of between 20 and 30 students. Both Weston and Hill had taught the skating class previously using SkateTime's program and equipment. Weston estimated that she taught the class approximately 315 times over the course of a four-year period. Hill testified that he taught approximately 125 skating classes. Both teachers were present in the gymnasium while the students were skating, and were available to assist students and correct those who were violating safety rules. They testified that skating technique demonstrations and safety instructions were provided to the students on a daily basis at the beginning of class. The rules and instructions provided to the students were based on the materials provided by SkateTime.

{¶7} The skating class was optional and in order to participate, permission slips were required to be completed by the students' parents. An alternative assignment was provided to those students who chose not to skate. The parties do not dispute that Michael provided a signed permission slip authorizing his participation in the skating class. He had also taken part in the class as a seventh-grade student.

{¶8} The record indicates that on May 9, the third day of the class, Weston and Hill had sectioned the gymnasium into separate skating areas.[2] The first area, characterized by the parties as a beginner or "safety zone," was designed for inexperienced skaters and ran the length of the gym floor. Those students who were not comfortable on skates were

2. The exact layout of the skating area is not clear from the record. Photographs of the gymnasium, which apparently included the general design of the skating course, are referenced as exhibits to Michael's deposition. However, these exhibits were not included in the record on appeal and it does not appear that they were before the trial court. We further note that the exhibits to the deposition of Kelly Simmons are also absent from the record on appeal.

encouraged to stay in the safety zone in order to work on basic techniques. There was also a second, general skating area which was composed of an outside circular skating lane, and an inner obstacle course consisting of orange cones spaced several feet apart on the floor for more experienced skaters. Students were permitted to weave around the cones in a slalom-like fashion. In addition, what has been characterized by the parties as a "bridge" or "limbo pole" was set up at the end of the obstacle course area. The "pole" was a long foam noodle. It was positioned on top of gym mats which were stacked on two chairs spaced several feet apart. According to Hill, students were permitted to skate only in a forward direction under the limbo pole, and were instructed to skate at a "slow, managed speed." The record also indicates that the teachers placed gym mats on the floor to separate the safety zone from the area where students were exiting the limbo pole, and to keep those students skating in the outside lane of the general skating area from those in the inner obstacle course. Those skating in the obstacle course had the right-of-way. The obstacle course and limbo pole activities were suggested in the SkateTime materials for those with "advanced skills."

{¶9} Michael was not an adept or confident skater and on the day of the accident, he was skating in the safety zone. According to Michael, he did not want to be the only student left in the safety zone and after spending several minutes in that area, he was feeling more comfortable on his skates. At that point, Michael determined that he was "capable enough" to venture into the general skating area.

{¶10} Michael was injured when another skater came into contact with him. It is unclear from the record how the accident actually occurred. Michael claimed that as he and a friend skated in the outside lane of the general skating area, a more advanced skater named Brennan was proceeding through the obstacle course. Michael testified that Brennan skated backwards under the limbo pole. As Brennan cleared the limbo pole he attempted to

turn to skate forward after merging into the outside lane of the general skating area. When Brennan turned, he lost his balance and fell on top of Michael. The heel of Brennan's skate struck the front of Michael's leg, fracturing his tibia. Michael's skating partner stated that Brennan was "slipping and sliding" prior to the collision. Neither Weston nor Hill observed Brennan skating backwards under the pole and did not witness the accident. However, Hill testified that just prior to the collision, he observed Michael leaving the safety area near the limbo exit by skating between two of the floor mats and directly into Brennan's path, which was in violation of the safety rules.

{¶11} Although Michael was wearing the required wrist guard, he was not wearing any additional safety equipment at the time of the accident. Michael's mother, Kelly, had worked at the school from 2001 to 2005 as a health aide. Kelly testified that during her employment, she treated at least one student who had suffered a broken hand or wrist as a result of the skating class.

{¶12} Appellants commenced this action on Michael's behalf in August 2009. Their second amended complaint, filed in February 2010, alleged that the school board, Bright, Weston, and Hill were negligent for: 1) failing to issue proper protective equipment; 2) failing to properly supervise the skaters; and 3) conducting the class on the gymnasium floor, which was "defective for the purpose of roller skating." Appellants also alleged that Weston and Hill were reckless in designing the skating course and supervising the students.

{¶13} Appellees filed a motion for summary judgment on September 27, 2010, arguing that they were immune from liability on appellants' claims pursuant to R.C. Chapter 2744. In its November 17, 2010 decision, the trial court granted appellees' motion, concluding that they were statutorily immune from suit and therefore entitled to judgment as a matter of law.

{¶14} Appellants appeal the trial court's decision, raising two assignments of error for

our review.

{¶15} Assignment of Error No. 1:

{¶16} "THE LOWER COURT ERRED, TO THE PREJUDICE OF THE PLAINTIFF-APPELLANTS STUDENT AND PARENTS, BY GRANTING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT-APPELLEES SCHOOL DISTRICT BASED ON SOVEREIGN IMMUNITY, IN A PERSONAL INJURY CLAIM FOR A SEVERE LEG INJURY OCCURRING IN A ROLLER SKATING CLASS, WHEN ISSUES OF FACT EXIST AS TO WHETHER THE GYMNASIUM FLOOR WAS DEFECTIVE." [SIC]

{¶17} In their first assignment of error, appellants challenge the trial court's determination that the school board was entitled to sovereign immunity. They claim that an exception to immunity exists because the gymnasium floor was physically defective for the purpose of roller skating.

{¶18} Summary judgment is a procedural device used to terminate litigation and avoid a formal trial where there are no issues in a case to try. *Burkes v. Stidham* (1995), 107 Ohio App.3d 363, 370, citing *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2. This court reviews summary judgment decisions de novo, which means that we review the trial court's judgment independently and without deference to its determinations. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296. We utilize the same standard in our review that the trial court should have employed. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App.3d 127, 129.

{¶19} The Ohio Supreme Court has repeatedly held that summary judgment is appropriate under Civ.R. 56 when "(1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor." *Zivich v. Mentor Soccer*

Club, Inc., 82 Ohio St.3d 367, 369-370, 1998-Ohio-389. The party moving for summary judgment has the initial burden of producing some evidence that affirmatively demonstrates the lack of a genuine issue of material fact. *Dresher v. Burt,* 75 Ohio St.3d 280, 292–93, 1996-Ohio-107. The nonmoving party must then rebut the moving party's evidence with specific facts showing the existence of a genuine triable issue; it may not rest on the mere allegations or denials in its pleadings. Id.; Civ.R. 56(E).

{¶20} The Political Subdivision Tort Liability Act, codified in R.C. Chapter 2744, sets forth a three-tiered analysis for determining whether a political subdivision is immune from liability for injury or loss to persons or property. *Cater v. Cleveland,* 83 Ohio St.3d 24, 28, 1998-Ohio-421. Under the first tier of the analysis, R.C. 2744.02(A)(1) sets forth the general rule that "a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, ¶10.

{¶21} The immunity afforded to a political subdivision under R.C. 2744.02(A)(1) is not absolute. The second tier of the analysis focuses on the five exceptions to immunity set forth in R.C. 2744.02(B). *Ryll v. Columbus Fireworks Display Co., Inc.*, 95 Ohio St.3d 467, 2002-Ohio-2584, ¶25. In the event that a political subdivision is subject to liability under one of the exceptions contained in R.C. 2744.02(B), immunity may be reinstated under tier three of the analysis if the political subdivision successfully asserts that one of the defenses found in R.C. 2744.03(A) applies. See *Elston* at ¶12; *Cater* at 28.

{¶22} In this case, the parties do not dispute that the school board is a political subdivision serving a governmental function, and that at the time of Michael's injury, Bright was acting as the superintendent of Mason City Schools, and that Weston and Hill were

employed as physical education teachers. R.C. 2744.01(C)(2)(c); R.C. 2744.01(F); *Pearson v. Warrensville Hts. City Schools*, Cuyahoga App. No. 88527, 2008-Ohio-1102, ¶12. Accordingly, the school board is immune from liability under R.C. 2744.02(A)(1) unless one of the five exceptions found in R.C. 2744.02(B) applies.

{¶23} Appellants argue that R.C. 2744.02(B)(4) is applicable here. This section provides that "political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function." R.C. 2744.02(B)(4).

{¶24} In order to invoke this immunity exception, appellants were required to establish that Michael's injury (1) was caused by the negligence of Weston and Hill; (2) occurred within or on the grounds of a building used in connection with the performance of a governmental function; and (3) was due to a physical defect within or on the grounds. R.C. 2744.02(B)(4). See *Moss v. Lorain Cty. Bd. of Mental Retardation*, 185 Ohio App.3d 395, 2009-Ohio-6931, ¶13. See, also, *DeMartino v. Poland Local School Dist*., Mahoning App. No. 10 MA 19, 2011-Ohio-1466, ¶40; *Alden v. Kovar*, Trumbull App. Nos. 2007-T-0114, 2007-T-00115, 2008-Ohio-4302, ¶49.

{¶25} In their brief in opposition to summary judgment, appellants argued that the school board's failure to properly coat, clean, and finish the floor rendered it defective for roller skating. In support of this claim, they produced an expert report prepared by Steven Shumaker, a principal of Rink Planning and Consulting Services, Inc.[3] Shumaker stated that he had worked in the roller skating business for 39 years and had provided consulting

3. Appellees moved to strike Shumaker's expert report and subsequent affidavit with regard to his qualifications. It does not appear from the record that the trial court ruled on appellees' motions and referred to Shumaker's report in its decision granting summary judgment in favor of appellees. When a trial court enters judgment but fails to expressly rule on a pending pretrial discovery motion, it is ordinarily presumed that the court overruled the motion. See *State ex rel. The V Cos. v. Marshall*, 81 Ohio St.3d 467, 469, 1998-Ohio-329.

services to multiple roller skating center operators on issues relating to safety, rink construction, and skating procedures. Shumaker opined that the skating course design, the flow of traffic, and the way the class was conducted fell short of several industry standards and constituted "gross negligence and recklessness." [4]

{¶26} Shumaker further stated that the gymnasium floor lacked the necessary and appropriate traction for safe skating. According to Shumaker, the hardwood floor in the gymnasium was problematic because it was designed for use as a basketball court instead of a roller skating floor, and that skating floor finishes contain special agents to create the proper traction between the skate wheels and the floor. He also stated that skating floors required special cleaning agents to be used, and that "typical" floor cleaners would cause the floor to be slick. He opined that the floor surface would become dangerously slick if the janitorial staff at the school used a treated dust mop instead of an untreated mop prior to the skating sessions. According to Shumaker, the "skating surface and the gymnasium coating that was used amounts to a physical defect."

{¶27} In determining that R.C. 2744.02(B)(4) operated to remove immunity from the school board, the trial court referenced Shumaker's report and opinion that the floor was physically defective. The court also noted that the injury to Michael occurred while he was on school grounds and while it was performing a government function of providing public education to students. The court further found that appellants "assert that one of the reasons the injury occurred was because of the negligence of the [t]eachers by not properly preparing

4. On appeal, appellees argue that Shumaker's report and accompanying affidavits failed to meet the requirements of Evid.R. 702. In order to comply with Civ.R. 56(E) and Evid.R. 702, an expert affidavit must set forth the expert's credentials and the facts supporting the expert's opinion which would be admissible into evidence. *Douglass v. Salem Cmty. Hosp.*, 153 Ohio App. 3d 350, 359, 2003-Ohio-4006. Contrary to appellees' argument, upon review, we find that Shumaker's affidavit set forth sufficient credentials demonstrating that he was qualified to render the opinions contained in his report. In addition, Shumaker's report adequately set forth the underlying facts upon which his opinion was based, and although he offered an opinion as to the ultimate issue, this is not per se impermissible under Evid.R. 704.

the gym floor for use as a roller skating rink before allowing the students to roller skate."

{¶28} Upon review of appellants' opposition brief below, however, we note that appellants failed to argue that Michael's injury occurred as a result of the teachers' negligence in allegedly failing to properly prepare the gym floor. On appeal, appellants also challenge the trial court's finding in this regard. Specifically, they claim that the trial court "erred by interposing its hypothesis that [appellants] were arguing that the teachers were somehow responsible for 'applying powder' to the improperly laid floor." Appellants further contend that "no individual employees are singled out or sued for making the floor defective. Rather, the teachers are sued for recklessness * * *; the school is sued because there exists a physical defect in its grounds that contributed to the injury [sustained by Michael]." From these statements, it appears that appellants have abandoned their claim that the alleged negligence of Weston and Hill caused Michael's injury. As a political subdivision acts only through its employees, appellants have therefore failed to establish that the exception in R.C. 2744.02(B)(4) with regard to the negligence of the school board's employees operated to remove the statutory immunity granted under R.C. 2744.02(A)(1). *Elston*, 2007-Ohio-2070 at ¶19.

{¶29} Notwithstanding the above-conclusion, based upon our independent review of the record, we also find that Shumaker's report fails to create an issue of fact as to the "physical defect" element. Although Shumaker opined generally that the skating floor did not meet minimum industry standards, he failed to specify which standards were applicable or who had promulgated such standards.

{¶30} Moreover, appellants' assertion that Brennan had "slipped" on the floor while skating, does not, without additional evidence, demonstrate that the floor lacked the necessary traction for safe skating. Both Weston and Hill testified that they had never before noticed any students slipping on the gymnasium floor in the skates. According to Adam

Higgason, Vice President of SkateTime, the urethane wheels on the skates appeared to work well on urethane-coated wooden floors. He further testified that he had viewed the gymnasium floor at the school, and that there was nothing about the floor that would have made him hesitant to run a SkateTime program on that surface. Higgason stated that he had never received any complaints from the schools implementing the SkateTime program with regard to the performance of the skates on gymnasium floors with surfaces similar to the one here.

{¶31} Nevertheless, even if we were to find that the school board's general immunity was removed under R.C. 2744.02(B)(4), under the third tier of the analysis, immunity may be restored if the board can establish one of the defenses contained in R.C. 2744.03(A). Appellees contend that the specific defenses set forth in 2744.03(A)(3) and (A)(5) apply to reinstate immunity in this case.

{¶32} R.C. 2744.03(A) provides, in relevant part, as follows:

{¶33} "(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

{¶34} "* * *

{¶35} "(5) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶36} Although both of these subsections concern a political subdivision employee's discretionary acts, in applying the R.C. 2744.03(A)(3) defense, a court must "'determine

whether there are any policy-making, planning, or enforcement powers involved, and then look to see whether the political subdivision's employee had discretion with respect to those powers by virtue of that employee's office or position.'" *Golden v. Milford Exempted Village School Bd. of Edn.*, Clermont App. No. CA2008-10-097, 2009-Ohio-3418, ¶34, quoting *Elston*, 2007-Ohio-2070 at ¶27. Also, unlike the subsection (A)(5) defense, R.C. 2744.03(A)(3) does not have language limiting its grant of immunity. *Elston* at id. Accordingly, "immunity exists even if the discretionary actions were done recklessly or with bad faith or malice." Id.

{¶37} In this case, the record indicates that Weston was directly involved in implementing the roller skating program into the school's physical education curriculum. Weston testified that she and the other seventh-and-eighth-grade teachers selected the activity in 2003 after Weston attended a convention in Columbus where representatives from SkateTime presented information regarding the program. Weston testified that she wrote the curriculum for the program each year, which was based on the guidelines provided by SkateTime. The curriculum included safety instructions, skating techniques, skill progression for each day of the class, and a diagram of the skating course.

{¶38} Hill testified that the skating class was in place when he began teaching at the school, but that he and the other physical education teachers had the ability to "instruct and modify where needed so that the curriculum did fit the needs of the class." According to Hill, the fitness components involved in roller skating, including coordination, balance, and core strengthening were very beneficial to the students. He believed it was a good program to keep in the physical education curriculum.

{¶39} Based on this evidence, we find that reasonable minds could only conclude that both Weston and Hill acted within the scope of their policy-making, planning, and enforcement powers attendant to their positions as physical education teachers with regard

to the implementation of the skating curriculum, the design of the course, and the supervision of the class. Accordingly, R.C. 2744.03(A)(3) applies to the actions of Weston and Hill and provides the school board with immunity.

{¶40} Turning our attention to the application of R.C. 2744.03(A)(5), the focus of our inquiry under this statutory subsection is whether, in construing the evidence in a light most favorable to appellants, a genuine issue of fact exists as to whether Weston and Hill acted with malicious purpose, in bad faith, or in a wanton or reckless manner in designing the skating course and supervising the class. See *Bolling v. N. Olmsted City Schools Bd. of Edn*., Cuyahoga App. No. 90669, 2008-Ohio-5347, ¶37-38.

{¶41} At the outset, we note that appellants have failed to allege that Weston and Hill acted maliciously or in bad faith. Appellants argue only that a genuine issue of material fact exists as to whether Weston's and Hill's conduct in designing the skating course and supervising the students rose to the level of recklessness.

{¶42} The term "reckless" is often used interchangeably with "willful" or "wanton." *Harland v. West Clermont Local School Dist*. (Aug. 1, 1994), Clermont App. No. CA94-01-006, at 3. An actor's conduct "'is in reckless disregard of the safety of others if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.'" *Fields v. Talawanda Bd. of Edn.*, Butler App. No. CA2008-02-035, 2009-Ohio-431, ¶15, quoting *O'Toole v. Denihan,* 118 Ohio St.3d 374, 2008-Ohio-2574, ¶73-74.

{¶43} Mere negligence is not converted into wanton or reckless conduct unless the evidence establishes a "'disposition to perversity on the part of the tortfeasor.' Such perversity must be under such conditions that the actor must be conscious that his conduct

will in all probability result in injury." *Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 118 Ohio St. 3d 392, 2008-Ohio-2567, ¶37. (Internal citations omitted.) Most activities in a physical education class contain some inherent element of risk which can never be completely eliminated. *Hughes v. Wadsworth City School* (Mar. 29, 2000), Medina App. No. CA2961-M, 2000 WL 327240, *3. A court's inquiry must therefore focus on whether the physical education instructor "acted with the knowledge of serious danger to his or her students or with the knowledge of certain facts that would disclose this danger to any reasonable man." Id.

{¶44} The determination of recklessness is typically within the province of the jury. *Fields* at ¶16; *Golden*, 2009-Ohio-3418 at ¶40. However, because the standard for showing recklessness is high, summary judgment is appropriate in those instances where the individual's conduct "does not demonstrate a disposition to perversity." *O'Toole* at ¶*75*; *Rankin* at ¶37.

{¶45} Appellants argue that Shumaker's report creates an issue of fact with regard to the recklessness of Weston and Hill. Specifically, Shumaker opined that it was "clear that the skating floor design and the traffic flow utilized for this skating class falls short of [minimum industry standards] and has several deficiencies." According to Shumaker, these deficiencies included the fact that there were multiple activities taking place simultaneously: novice skaters were skating with those who more experienced, students were skating in different directions on the floor, and the obstacle course and limbo pole were being utilized. Shumaker stated that the limbo pole was not attended by direct supervision "as is customary," and that the entrance and exit area from the safety zone was adjacent to the exit area for the limbo pole. He opined that "the design of this skating course and the dictated traffic flow was inappropriate for the safety of all skaters involved in the class. Consequently, the way that the class was conducted [ ] amounted to gross negligence and recklessness."

{¶46} Once again, we find Shumaker's report deficient in several respects. Although he states that minimum industry standards were not followed, he neglects to mention such standards and appellants have not produced additional evidence with regard to the proper standards. Although the safety zone exit area was adjacent to the exit area for the limbo pole, Shumaker did not opine, and there is no evidence in the record to suggest, that this was per se improper pursuant to skating industry standards. In addition, there is no evidence in the record to indicate that with the exception of Brennan, the students were skating in different directions on the gymnasium floor. Michael testified that the students were skating in a counterclockwise direction. Even construing Shumaker's report most strongly in appellants' favor, it does not establish an issue of fact as to whether Weston and Hill were reckless.

{¶47} It is well-established that a classroom teacher has wide discretion under R.C. 2744.03(A)(5) to determine what level of supervision is necessary to ensure the safety of the children in his or her care. *Marcum v. Talawanda City Schools* (1996), 108 Ohio App.3d 412, 416; *Golden*, 2009-Ohio-3418 at ¶36. Both Weston and Hill testified that they provided skating technique and safety instructions to the students at the beginning of every class, and reassessed those instructions on a daily basis. According to Weston, she re-evaluated the class each day to ensure that the students were developing skating skills in a progressive manner. Those students that were not confident on skates were encouraged to remain in the safety zone; they were not required to skate in the general skating area. Michael testified that he was encouraged to stay in the safety zone until he was comfortable with his skates. Hill testified that he would send students who were unsteady on their skates to the safety zone.

{¶48} The record indicates that the teachers took precautions to avoid collisions by sectioning off the skating areas with mats and by instructing the students to skate in a

controlled fashion in the same general direction. Students who elected to skate through the obstacle course and under the limbo pole were instructed to do so at a slow, managed speed. According to Hill, the limbo pole was positioned at such a height that the students going underneath it needed to make only a "very small movement" in order to clear the noodle. Both teachers testified to reprimanding those students who did not follow the safety rules. Although Weston and Hill did not witness the collision, the parties do not dispute that they were both present in the gymnasium at the time the accident occurred and attended to Michael immediately after he fell.

{¶49} To the extent that appellants also appear to argue that Weston and Hill were reckless in failing to require the students to wear additional safety equipment, the record indicates that those students who had safety equipment at home were permitted to bring it to class. Michael testified that he had a helmet, elbow pads and knee pads at home, which he wore while skateboarding. He did not recall requesting additional equipment from his parents or teachers.

{¶50} Based on the foregoing, we conclude that there is no evidence to establish that Weston or Hill created an unreasonable risk of harm to the students, or showed a perverse disregard for the fact that the students might be injured as a result of the way the class was conducted, the course was designed, or the manner in which the students were supervised. As a result, we find that Weston's and Hill's actions were not, as a matter of law, wanton or reckless and as such, the school board is immune from liability pursuant to R.C. 2744.03(A)(5). The trial court properly granted summary judgment in its favor.

{¶51} Appellants' first assignment of error is overruled.

{¶52} Assignment of Error No. 2:

{¶53} "THE LOWER COURT ERRED, TO THE PREJUDICE OF THE PLAINTIFF-APPELLANTS STUDENT AND PARENTS, BY GRANTING SUMMARY JUDGMENT IN

FAVOR OF THE DEFENDANT-APPELLEES TEACHERS BASED ON SOVEREIGN IMMUNITY, IN A PERSONAL INJURY CLAIM FOR A SEVERE LEG INJURY OCCURRING IN A ROLLER SKATING CLASS, WHEN THE UNCONTROVERTED EXPERT TESTIMONY IS THAT THE ACTIONS OF THE TEACHERS IN SUPERVISING THE CLASS WERE TANTAMOUNT TO RECKLESSNESS." [SIC]

{¶54} In their second assignment of error, appellants contend that the trial court erred in concluding that Weston and Hill were entitled to immunity on appellants' additional claim that their conduct in implementing and supervising the skating class rose to the level of recklessness.

{¶55} In examining immunity pursuant to R.C. Chapter 2744 with regard to individual employees of a political subdivision, courts do not engage in the three-tiered analysis. *Pearson*, 2008-Ohio-1102 at ¶29. Instead, R.C. 2744.03(A)(6) provides, in part, that a political subdivision employee is immune from liability in a civil action for claims arising from the employee's official actions unless "(a) [t]he employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities; (b) [t]he employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; (c) [c]ivil liability is expressly imposed upon the employee by a section of the Revised Code."

{¶56} There is no revised code section that expressly imposes liability on Weston and Hill. In addition, appellants have not alleged that their actions were outside the scope of their employment or official responsibilities. As we discussed in our resolution of appellants' first assignment of error, they have not argued that Weston or Hill acted with a malicious purpose or in bad faith in this case. In light of our determination above that reasonable minds could only conclude that their actions were not wanton or reckless, we find that the trial court properly granted summary judgment in favor of Weston and Hill.

{¶57} Appellants' second assignment of error is overruled.

{¶58} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.