

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CARLA DUNN

Plaintiff-Appellee

-VS-

LICKING COUNTY HUMANE
SOCIETY, ET AL.

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Patricia A. Delaney, J.

Case No. 14-CA-101

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 13 CV 1135

JUDGMENT:

REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY:

June 18, 2015

APPEARANCES:

For Plaintiff-Appellee:

DAVID T. BALL
ROSENBERG & BALL CO., LPA
395 North Pearl Street
Granville, OH 43023

For Defendant-Appellant:

STEPHEN C. FINDLEY
FREUND, FREEZE & ARNOLD
Capitol Square Office Building
65 E. State Street, Suite 800
Columbus, OH 43215-4247

Delaney, J.

{¶1} Defendant-Appellant Licking County Humane Society appeals the November 3, 2014 judgment entry of the Licking County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} Plaintiff-Appellee Carla Dunn is a resident of Kentucky. Since 2008, Dunn and her husband have bred Labradoodle dogs and sell the puppies.

{¶3} Samantha Magers is a resident of St. Louisville, Licking County, Ohio. In 2012, Magers was employed as an office manager and veterinary assistant. Magers has owned dogs her entire life and had once been a dog breeder. In 2011 or 2012, Magers met Dunn through a client at the veterinary office. The client was thinking of purchasing a puppy from Dunn and asked if Magers could critique it for her. Magers spoke to Dunn over the telephone. After that initial contact, Magers and Dunn frequently corresponded either by email or over the telephone. Their conversations often involved discussions about dog breeding. Magers stated that during their relationship, Magers disclosed to Dunn that she had been cited by animal control officers with multiple violations, but Magers said Dunn did not seem concerned.

{¶4} In August 2013, Dunn contacted Magers by telephone. Dunn told Magers she was having difficulty breeding her larger dogs with her smaller dogs. Magers and her friend had some experience artificially inseminating dogs. Dunn needed to travel to Michigan, so Dunn and Magers arranged to meet in Ohio where Magers would take Dunn's dogs and attempt to breed them through artificial insemination. Dunn did not ask to inspect or to see photos of Magers' facilities before agreeing to let Magers care for her dogs while she attempted to breed them.

{¶5} On August 9, 2013, Dunn and Magers met in a mall parking lot in Dayton, Ohio. This was the first time Dunn and Magers met in person. Dunn delivered nine adult Labradoodle dogs to Magers.

{¶6} Magers brought the nine dogs to her property in Licking County. In addition to Dunn's nine dogs on her property, Magers had ten of her own dogs, one dog from a friend, twelve cocker spaniel puppies, three cats, three horses, and one pony. On August 13, 2013, Humane Agent Paula Evans with Defendant-Appellant Licking County Humane Society ("LCHS") inspected Magers' property based on a complaint regarding Magers' horses. Agent Evans could not make contact with Magers. Agent Evans returned to Magers' property on September 4, 2013. Agent Evans observed the property was overgrown with weeds and trash-filled. She observed the horses were underweight. She saw bulldogs placed outside in Vari crates, which are plastic crates used for airline travel. She observed a Labradoodle dog in a crate with a dollhouse and ten to twelve cocker spaniel puppies inside some small fencing. There was no shelter from the sun. Agent Evans saw that the water for the dogs was green.

{¶7} Agent Evans visited the property and met with Magers on September 17, 2013. Agent Evans observed dogs in wire crates placed directly on the ground. In some small to medium crates, there were two to three dogs, with no place for the dogs to escape. She did not observe water in the crates. Two other dogs were tied up outside. Agent Evans attempted to visit the property on October 8, 2013, but could not access the property because Magers had installed cattle gates. Agent Evans opened an investigation into possible animal abuse and neglect on October 8, 2013.

{¶8} In early October 2013, one of Dunn's Labradoodle dogs gave birth to a litter of ten puppies. Dunn and Magers believed the dog was pregnant when Dunn delivered the dogs to Magers.

{¶9} On October 29, 2013, Agent Evans obtained a search warrant for Magers' property. Agent Evans, three sheriff's deputies, and a veterinarian entered Magers' property based on the search warrant. The outside conditions of the Magers' property had not changed. When Agent Evans went inside Magers' home, Agent Evans found more dogs and three cats. Agent Evans said the smell of urine in the house was overwhelming. Agent Evans discovered a Labradoodle dog with ten puppies living in an X pen in Magers' kitchen. Agent Evans said the smell from the pen was horrendous and she saw that the floor of the pen was covered in feces. The puppies were also covered in feces, which Magers disputed.

{¶10} Agent Evans came to the property expecting to remove 14 to 18 dogs. Agent Evans removed 42 dogs from Magers' property.

{¶11} While the animals were being removed from Magers' property, Agent Evans requested that Magers sign a voluntary surrender form. The form stated:

I, Samantha Magers, hereby permanently surrender the animals named *
* * to the Licking County Humane Society. I certify that I am the owner of
this animal, or that I am acting as the owner's agent, or that I am
otherwise acting in good faith that I have the authority to execute this
contract.

I understand that effective immediately, ownership of this animal will
transfer to the Licking County Humane Society and the animal will become

their property and all decisions regarding this animal will henceforth be at the discretion of that entity. I further understand that if in the future I change my mind, I may not get the animal returned to me.

{¶12} Magers signed the form, but Magers contends it was not voluntarily. She said Agent Evans was holding one of her three cats hostage, so she signed the form in order to keep her cats. Agent Evans said she did not give Magers any conditions to induce her to sign the form. Magers was charged with violations of R.C. 959.131, cruelty against companion animals, and R.C. 959.13(A)(1), cruelty to animals.

{¶13} Magers told Agent Evans that some of the dogs did not belong to her, but she would not disclose the owners. Dunn called Magers that day and Magers told Dunn her dogs had been removed from Magers' property by LCHS.

{¶14} On October 30, 2013, Agent Evans was told by the Licking County Sheriff's Department that Dunn had called for information about the dogs removed from Magers' property. Agent Evans spoke with Dunn on the phone that day. Dunn told her that some of the dogs removed from Magers' property belonged to her. Dunn gave Agent Evans the list of her dogs and her contact information. Agent Evans consulted with the Amy Davison, the assistant law director for the City of Newark. Prosecutor Davison also spoke on the phone with Dunn. Prosecutor Davison told Dunn that because the dogs were part of a criminal investigation, the City required written proof of ownership of the dogs. Prosecutor Davison sent Dunn a letter on October 30, 2013 stating the City would only release the dogs that Dunn legally owned. Dunn was required to provide written verification of proof of ownership. Once the information was

received and verified, Prosecutor Davison would authorize the immediate transfer of the dogs from the shelter to Dunn.

{¶15} On November 3, 2013, Dunn met with Prosecutor Davison, Agent Evans, and Lori Carlson, Executive Director of LCHS. At the meeting, Dunn executed written verification of Dunn's ownership of the nine adult dogs. Dunn produced kennel records, some AKC registrations, and bills of sale to prove she owned the nine dogs. Prosecutor Davison discussed with Dunn the situation in which her dogs were found at Magers' property and showed Dunn photographs from October 29, 2013. Dunn admitted she did not check Magers' facilities before she left her dogs with Magers. She assumed everything was okay from speaking with Magers. Dunn said she had an oral agreement with Magers to artificially inseminate the dogs.

{¶16} At the meeting, Prosecutor Davison said Dunn repeatedly asked her about the release of the ten puppies. Dunn claimed the market value of the puppies was \$1,500.00 for each puppy. One of the puppies was worth more than \$1,500.00 because of the distinctive coloring of its nose. Prosecutor Davison told Dunn that under the legal investigation, she would not release the puppies to Dunn unless she could provide written documentation of ownership of the puppies. Prosecutor Davison told Dunn there was no evidence that the puppies belonged to Dunn. She believed that Dunn either did not know the dog was pregnant when she brought it to Ohio or the dog became pregnant while it was in Magers' care. Dunn became aware of the existence of the puppies only because Magers told her about them. LCHS seized the puppies based on the allegations of animal cruelty. She informed Dunn that pursuant to the discretion of

Executive Director Carlson, LCHS could make an independent decision as to the release of the puppies to Dunn.

{¶17} After the meeting, LCHS released the nine dogs to Dunn on the condition that she immediately obtained veterinary care for them.

{¶18} Dunn faxed a letter to Prosecutor Davison on November 5, 2013 stating she had the nine dogs examined by her veterinarian. She included the veterinarian's report, which showed the nine dogs were diagnosed with otitis externa due to yeast, hookworms and/or whipworms. The veterinarian also wrote a statement that he had treated Dunn's animals since 2006 and Dunn sought medical treatment for her animals as necessary. Dunn requested in her letter that Prosecutor Davison release the puppies to her.

{¶19} On November 7, 2013, Dunn's friend contacted LCHS to inquire of the status of the puppies. LCHS informed him the puppies had been placed for adoption and had all been spoken for. He was told the puppies would be released for adoption on November 12, 2013.

{¶20} On November 8, 2013, counsel for Dunn faxed a letter to Executive Director Carlson and provided Prosecutor Davison with a courtesy copy. In the letter, counsel requested LCHS to immediately halt all efforts to permit the adoption of the puppies. Counsel asked LCHS to contact him by the close of business on November 11, 2013 to arrange for LCHS to return the puppies to Dunn. Counsel stated that if LCHS did not contact him by that date, Dunn would consider all legal avenues available to her to obtain the release of the puppies.

{¶21} LCHS and Prosecutor Davison did not respond to Dunn's November 8, 2013 letter.

{¶22} On November 11, 2013, LCHS released the puppies to their adoptive families. The approximate age of the puppies at the time of adoption was 5½ weeks old.

{¶23} On November 12, 2013, Dunn filed a verified complaint for declaratory judgment and injunctive relief in the Licking County Court of Common Pleas. Dunn named LCHS as the defendant. Dunn requested a temporary restraining order to prevent LCHS from authorizing the adoption of the puppies. In paragraph 35 of the verified complaint, Dunn stated, “[p]laintiff will be irreparably harmed if her dogs are adopted and never returned to her because under Ohio law Defendant is immune from civil claims for damages.”

{¶24} The trial court granted the temporary restraining order on November 12, 2013. An oral hearing was held on November 22, 2013. On November 25, 2013, the trial court issued a judgment entry finding the temporary restraining order and preliminary injunction were moot. The trial court permitted Dunn to amend her complaint based on the adoption of the puppies. In Dunn's amended complaint, she brought a claim of conversion against LCHS. LCHS claimed it was subject to sovereign immunity under R.C. Chapter 2744 in its amended answer.

{¶25} LCHS filed a motion for summary judgment on September 4, 2014 based on sovereign immunity. Dunn filed a motion for summary judgment on September 5, 2014 on her claim for conversion.

{¶26} On October 28, 2014, the trial court issued its decision on the motions for summary judgment. The trial court determined LCHS was not entitled to political

subdivision immunity from Dunn's claim of conversion because it found LCHS was engaged in a proprietary function when it adopted out the puppies. It also found as a matter of law that LCHS acted in a wanton and reckless manner when it adopted out the puppies. It set Dunn's claim for conversion for a damages hearing. The trial court's decision to deny LCHS's motion for summary judgment and grant Dunn's motion for summary judgment was finalized in a judgment entry issued November 3, 2014.

{¶27} It is from this decision LCHS now appeals.

ASSIGNMENTS OF ERROR

{¶28} LCHS raises two Assignments of Error:

{¶29} "I. THE TRIAL COURT ERRED BY FAILING TO GRANT LICKING COUNTY HUMANE SOCIETY (LCHS) POLITICAL SUBDIVISION IMMUNITY UNDER R.C. CHAPTER 2744.

{¶30} "II. THE TRIAL COURT ERRED BY HOLDING, AS A MATTER OF LAW, LCHS ACTED WITH WANTON AND RECKLESS CONDUCT WHEN AUTHORIZING THE ADOPTION OF SEIZED ABUSED/NEGLECTED PUPPIES WITH THE PERSON IN CUSTODY OF THOSE PUPPIES LEGALLY RELEASED THEM TO LCHS."

ANALYSIS

Summary Judgment Standard of Review

{¶31} The two Assignments of Error of LCHS argue the trial court erred in granting summary judgment in favor of Dunn. We refer to Civ.R. 56(C) in reviewing a motion for summary judgment which provides, in pertinent part:

Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits,

transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.* * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶32} The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court, which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). The nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth “specific facts” by the means listed in Civ.R. 56(C) showing that a “triable issue of fact” exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798, 801 (1988).

{¶33} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

I. Immunity

{¶34} LCHS argues the trial court erred when it found it was not entitled to immunity pursuant to R.C. Chapter 2744. Upon our de novo review, we agree.

{¶35} R.C. 2744.02(A)(1) provides:

For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person 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.

Immunity is a doctrine that provides a complete defense to a tort action. By asserting an immunity defense, the defendant does not allege that there was no negligence. The defendant is asserting that it is protected from liability for negligence by reason of R.C. Chapter 2744. See *Miles ex rel. Miles v. Rich*, 347 S.W.3d 477, 485, 2011 WL 1564030 (Mo.App.2011)

{¶36} The first issue is whether the Licking County Humane Society is a political subdivision and is therefore entitled to immunity under R.C. 2744.01 et seq. Dunn does not dispute in her appellate brief that a county humane society is a political subdivision for purposes of the immunity statutes. It is well established in Ohio that a county humane society is considered a political subdivision. See *Studer v. Seneca County Humane Society*, 3rd Dist. Seneca No. 13-99-59, 2000-Ohio-1823; *Earle v. Wood County Humane Society*, 6th Dist. Wood No. WD-01-061, 2002-Ohio-3156; *Patton v.*

Wood Cty. Humane Soc., 154 Ohio App.3d 670, 2003-Ohio-5200, 798 N.E.2d 676 (6th Dist.).

{¶37} A three-tiered analysis is required to determine whether a political subdivision is immune from tort liability pursuant to R.C. 2744. *Anderson v. Massillon*, 5th Dist. Stark No. 2013CA00144, 2014-Ohio-2516, ¶ 35 citing *Green Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 556–557, 733 N.E.2d 1141 (2000); *Smith v. McBride*, 130 Ohio St.3d 51, 2011–Ohio–4674, 955 N.E.2d 954, ¶ 13–15. The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental or a proprietary function. *Green Cty. Agricultural Society*, at 556–557, 733 N.E.2d 1141; R.C. 2744.02(A)(1). That immunity, however, is not absolute. R.C. 2744.02(B); *Carter v. Cleveland*, 83 Ohio St.3d 24, 697 N.E.2d 610 (1998). “The second tier of the analysis requires a court to determine whether any of the five listed exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability.” *Id.* If one of the five exceptions applies and exposes a political subdivision to liability, the third step is to determine whether any of the additional defenses or immunities contained in R.C. 2744.03 apply. *Patton v. Wood Cty. Humane Soc.*, 154 Ohio App.3d 670, 2003-Ohio-5200, 798 N.E.2d 676, ¶ 35.

The Second Tier – Governmental or Proprietary Function?

{¶38} The second tier of the analysis is found under R.C. 2744.02(B). The statute enumerates five exceptions to the general grant of immunity stated in R.C. 2744.02(A). The exception at issue in the present case is contained in R.C. 2744.02(B)(2). The statute reads:

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

* * *

Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property *caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.*

(Emphasis added.)

{¶39} Dunn argues the exception to immunity for negligent performance of a proprietary function applies. Dunn contends that, although the seizure of animals based on allegations of animal cruelty is a governmental function, LCHS's operation of an animal adoption center and its refusal to give the puppies to Dunn was a proprietary function.

{¶40} R.C. 2744.01(C)(1) states that a "governmental function" is a function of a political subdivision that is specified in R.C. 2744.01(C)(2) or one that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

- (b) A function that is for the common good of all citizens of the state;
- (c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

{¶41} A governmental function is also specified as one that involves the enforcement of any law or a function that the general assembly mandates a political subdivision to perform. R.C. 2744.01(C)(2)(i) and 2744.01(C)(2)(x).

{¶42} A proprietary function is described by R.C. 2744.01(G) as follows:

(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

- (a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

- (b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

- (a) The operation of a hospital by one or more political subdivisions;

- (b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

{¶43} The Ohio legislature allows counties to organize a society for the prevention of acts of cruelty to animals. R.C. 1717.05. LCHS is organized under R.C. 1717.05. Ohio law codifies the purpose and function of the humane society. R.C. 1717.02 states, "[t]he objects of the Ohio humane society, and all societies organized under section 1717.05 of the Revised Code, shall be the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals." The First District Court of Appeals has held that the prosecution of animal cruelty crimes initiated and advanced by a humane society are "carried on, in the name, and by the authority, of the State of Ohio." *Donnelly v. Zekan*, 9th Dist. Summit No. 19563, 2000 WL 762811, *6 (June 14, 2000) citing *State v. Hafle* (1977), 52 Ohio App.2d 9, 15, 367 N.E.2d 1226. See, also, 1996 Ohio Atty.Gen.Ops. No. 049, at 422 to 423.

{¶44} On October 29, 2013, LCHS seized the animals on Magers' property for the purpose for enforcing the laws regarding cruelty to animals. On November 11, 2013,

LCHS released the seized puppies for public adoption. Dunn argues LCHS's operation of an animal adoption center and LCHS's refusal to give the puppies to Dunn was a proprietary function. The applicability of the exception to immunity depends upon whether LCHS was engaged in a proprietary or governmental function when it did not give the puppies to Dunn and/or released the puppies for public adoption.

{¶45} Dunn does not dispute that on October 29, 2013, LCHS seized the animals on Magers' property for the purpose for enforcing the laws regarding cruelty to animals. In *Studer v. Seneca County Humane Society*, 3rd Dist. Seneca No. 13-99-59, 2000-Ohio-1823, the plaintiff brought a claim of conversion against the humane society for failing to return the plaintiff's cats and dogs seized by the humane society based on allegations of animal cruelty. The court held that a humane society was acting for the common good of all citizens and/or was enforcing the laws regarding cruelty to animals when the humane society seized 78 dogs and 81 cats. *Id.* at *4. The court held the humane society was performing a governmental function, which could not be considered a proprietary function. *Id.* The court found the third tier of the analysis under R.C. 2744.03 was not applicable because the humane society was not subject to liability under the second tier of the analysis. *Id.* Because the humane society was engaged in a governmental function, it was immune from tort liability and therefore immune from the claim for conversion under R.C. Chapter 2744. *Id.*

{¶46} The reasoning in *Studer* was adopted in *Earl v. Wood County Humane Society*, 6th Dist. Wood No. WD-01-061, 2002-Ohio-3156. In that case, the appellee filed a complaint sounding in conversion against the humane society and the shelter manager, seeking the return of his puppy. *Id.* at ¶ 2. The trial court ordered the return of

the puppy and awarded the appellee attorney's fees. *Id.* The court of appeals reversed the decision to award attorney's fees, finding the humane society and the shelter manager were immune from tort liability pursuant to Chapter 2744. *Id.* at ¶ 14.

{¶47} Dunn argues the facts of *Studer* and *Earl* are different from those in the present case. In *Studer* and *Earl*, Dunn states the party bringing the claim for conversion against the humane society was the party that was accused of animal cruelty. As LCHS stated in its appellate brief, the entitlement of immunity pursuant to R.C. Chapter 2744 is not dependent upon the status of party raising the tort claim. Under the second tier of the immunity analysis, the application of immunity is dependent on whether the political subdivision was engaged in a governmental function or proprietary function.

{¶48} In this case, there is no factual dispute that Dunn entrusted the care of her nine dogs to Magers without viewing or inspecting Magers' facilities before releasing her dogs to Magers. While under Magers' care, one of Dunn's adult dogs delivered ten puppies. Dunn was not aware the dog was pregnant until Magers informed her about the puppies. There is no dispute that LCHS removed 42 dogs from Magers' property based on allegations of animal cruelty. The nine dogs belonging to Dunn and the ten puppies were among the 42 dogs removed from Magers' property based on allegations of animal cruelty. Dunn argues she had no knowledge of Magers' commission of animal cruelty, but Dunn's knowledge is not relevant to the issue of whether LCHS was engaged in a governmental or proprietary function. Magers pleaded no contest and was found guilty of animal cruelty under R.C. 959.131. Pursuant to R.C. 959.99, (5)(a) "[a] court may order a person who is convicted of or pleads guilty to a violation of section

959.131 of the Revised Code to forfeit to an impounding agency, as defined in section 959.132 of the Revised Code, any or all of the companion animals in that person's ownership or care." R.C. 959.99(5)(a).

{¶49} The codified objective of the humane society "* * *" shall be the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals." R.C. 1717.02. The puppies were confiscated and held by LCHS because of animal cruelty. In *Studer v. Seneca County Humane Society*, 3rd Dist. Seneca No. 13-99-59, 2000-Ohio-1823, the court found the humane society was engaged in a governmental function and therefore the humane society was entitled to immunity from plaintiff's claim for conversion based on the humane society's failure to return seized animals. The court held the humane society was acting for the common good and/or was enforcing the laws regarding animal cruelty. The court held those functions were governmental, not proprietary, and the exception to immunity did not apply. The authority of *Studer* has been relied upon by *Earl v. Wood County Humane Society*, 6th Dist. Wood No. WD-01-061, 2002-Ohio-3156 and *Patton v. Wood Cty. Humane Soc.*, 154 Ohio App.3d 670, 2003-Ohio-5200, 798 N.E.2d 676 (6th Dist.) based on similar claims for conversion of animals confiscated and held by the county humane society because of animal cruelty. Upon our de novo review, we follow *Studer* to hold LCHS was engaged in a governmental function when it confiscated and held the puppies based on animal cruelty. LCHS is not subject to Dunn's claim of conversion under one of the five exceptions in R.C. 2744.02(B).

The Third Tier

{¶50} The final tier of the analysis is R.C. 2744.03, which provides further defenses and immunities a political subdivision may assert. R.C. 2744.03 is only applicable, however, if the political subdivision is subject to liability under one of the five exceptions contained in R.C. 2744.02(B). LCHS is not subject to liability under one of the five exceptions in R.C. 2744.02(B), therefore R.C. 2744.03 is not applicable.

{¶51} Accordingly, we sustain the first Assignment of Error of LCHS to find the trial court erred when it found LCHS was not entitled to immunity under R.C. Chapter 2744.

II. Wanton and Reckless Conduct

{¶52} LCHS argues in its second Assignment of Error that the trial court erred when it found as a matter of law LCHS acted with wanton and reckless conduct when it authorized the adoption of the puppies.

{¶53} We found LCHS was entitled to immunity from Dunn's claim of conversion and sustained the first Assignment of Error of LCHS. Based on this decision, we find the second Assignment of Error is moot.

CONCLUSION

{¶54} Based upon our de novo review, we sustain the first Assignment of Error.

{¶55} The judgment of the Licking County Court of Common Pleas is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion and law.

By: Delaney, J.,

Hoffman, P.J. and

Farmer, J. concur.