

Case No. 2018-377

In The Supreme Court of Ohio

Appeal from the Court of Appeals
Seventh Appellate District
Mahoning County, Ohio
Case No. 17 MA 45

RENEE McCONNELL, ET AL.,
Appellees,

v.

DONALD C. DUDLEY, JR., ET AL.,
Appellants.

**Brief of Amici Curiae City of Canton, City of Massillon, and
City of Alliance in Support of Donald C. Dudley, Jr., et al.**

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STATEMENT OF INTEREST OF THE AMICI CURIAE

The cities of Canton, Massillon, and Alliance are the three largest cities in Stark County. Each responds to hundreds of emergency calls. As a result, Canton, Massillon, and Alliance have an interest in seeing that the exception to immunity set forth in R.C. 2744(B)(1)(a), which applies where an officer's conduct in responding to an emergency call is willful or wanton, is applied as the General Assembly intended. Specifically, the amici curiae have an interest in ensuring that the exceptions to immunity are applied narrowly and consistent with the General Assembly's purpose of ensuring the fiscal integrity of political subdivisions.

Canton, Massillon, and Alliance, like most cities in Ohio, have suffered from decreasing revenues over the past several years. To the extent those revenues are paid to plaintiffs or expended to defend against their claims when no recovery was intended by the General Assembly, that money is not available for the essential governmental services.

STATEMENT OF THE CASE AND FACTS

The amici curiae adopt and incorporate by reference the statement of the case and facts contained in Coitsville Township's merit brief.

ARGUMENT

Proposition of Law:

A political subdivision is immune from liability for allegations of negligent hiring, or failure to train or supervise police officers, as such allegations do not fall within any of the exceptions found within R.C. 2744(B)(1)–(5).

- A. The unambiguous text of R.C. 2744.02 excludes claims that a political subdivision negligently trains its safety personnel in responding to emergency calls.**

Determining whether a political subdivision is immune from tort liability under R.C. Chapter 2744 involves a three-tiered analysis.¹ Under the first tier, political subdivisions are immune from liability incurred while performing either a governmental function or proprietary function.² Here, the parties agree that Coitsville Township is immune under this tier because the alleged wrongful conduct constitutes a governmental function.³

But this immunity is not absolute.⁴ The second tier—where the dispute in this case lies—requires a court to determine whether any of the five exceptions in R.C. 2744.02(B) apply. The relevant exception here is subsection (B)(1)(a), which immunizes political subdivisions from damages caused by a member of its police department “operating a motor vehicle while responding to an emergency call”

¹ *Baker v. Wayne Cty.*, 147 Ohio St.3d 51, 2016-Ohio-1566, 60 N.E. 1214, ¶ 11.

² *Id.*; R.C. 2744.02(A)(1).

³ *McConnell v. Dudley*, 7th Dist. Mahoning No. 17MA45, 2018-Ohio-341, ¶ 22.

⁴ R.C. 2744.02(B); *Cater v. Cleveland*, 83 Ohio St.3d 24, 28, 1998-Ohio-421, 697 N.E.2d 610.

unless the officer's actions were willful or wanton. This exception is clear in that it encompasses only how the officer "operated" the motor vehicle. As a fact-intensive inquiry, courts routinely examine factors like the officer's speed, the time of day, the weather, the officer's familiarity with the road, whether traffic was light or heavy, and whether the officer activated lights and sirens. Here, the Seventh District held that the facts, viewed in a light most favorable to McConnell, indicated there was a jury issue as to whether Officer Dudley was willful and wanton in entering the intersection where the accident occurred.⁵

But then the court applied that exception to immunity to consider count three of McConnell's complaint, which alleged that Coitsville was negligent in training and supervising Officer Dudley regarding its pursuit policy. The court explained that while Coitsville had a pursuit policy and that Officer Dudley reviewed the policy in 2011, he had not been trained on it since. That, according to the Seventh District, meant there was "a genuine issue of material fact ... as to whether Coitsville Township through its [police department] was negligent in training and supervising Officer Dudley."⁶

The unambiguous text of R.C. 2744.02(B)(1)(a), however, excludes a claim that a political subdivision negligently trained a police officer. It includes only whether the *officer* was willful or wanton in *operating* the vehicle. In other words,

⁵ *McConnell* at ¶ 25.

⁶ *Id.* at ¶ 38.

the statute does not authorize an independent cause of action for a political subdivision negligently training a police officer regarding a pursuit policy.

B. The five unambiguous exceptions to immunity confirm the General Assembly’s purpose in immunizing political subdivisions.

The General Assembly enacted R.C. Chapter 2744, Ohio’s Political Subdivision Tort Liability Act, to provide cities with immunity from tort liability with certain exceptions.⁷ This Supreme Court has held that the protections of the Act “are urgently needed in order to ensure the continued orderly operation of local governments and the continued ability of local governments to provide public peace, health, and safety services to their residents.”⁸ This Court further observed that “manifest statutory purpose of R.C. Chapter 2744 is the preservation of the fiscal integrity of political subdivisions.”⁹

Moreover, the enactment of R.C. 2744.02 reflects a policy choice to give political subdivisions the full benefits of sovereign immunity from tort claims.¹⁰ Likewise, the exceptions to immunity reflect policy choices on the state’s part to submit itself to judicial relief on tort claims only with respect to the particular circumstances in those exceptions. And because those exceptions are in derogation of

⁷ *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 452, 1994-Ohio-394, 639 N.E.2d 105.

⁸ *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 38.

⁹ *Wilson* at 453.

¹⁰ *Doe v. Dayton City School Dist. Bd. of Edn.*, 137 Ohio App.3d 166, 169, 738 N.E.2d 390 (2nd Dist.1999).

a general grant of immunity, they should be construed narrowly if the balances which have been struck by the state's policy choices are to be maintained.¹¹ As a result, the Seventh District's decision to expand the immunity exception for willful and wanton driving to include negligent training is contrary to the purpose of the general grant of immunity for political subdivisions.

CONCLUSION

For these reasons, the amici curiae respectfully request that this Court reverse the Seventh District's decision and adopt the propositions of law advanced by Coitsville Township.

Respectfully submitted,

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¹¹ *Id.*

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