
IN THE SUPREME COURT OF OHIO
CASE NO.: 2019-1778

Appeal from the Court of Appeals
Eleventh Appellate District
Trumbull County, Ohio
Case No.: 2019-TR-0006

LAMANA RAY, Administrator of the Estate of Daylan Ray, Deceased, et al.,

Plaintiffs/Appellants,

v.

CITY OF WARREN,

Defendant

And

TRUMBULL COUNTY BOARD OF COMMISSIONERS,

Defendant/Appellee.

**DEFENDANT/APPELLEE TRUMBULL COUNTY BOARD OF COMMISSIONERS'
MEMORANDUM IN OPPOSITION TO JURISDICTION**

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I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Despite Plaintiffs/Appellants' arguments, this case does not pose an issue of public or great general interest.

This case arises out of a one-car accident in which the car was travelling at a high rate of speed and crashed through a City of Warren guardrail that the Plaintiffs/Appellants claim was deteriorated and caused them damages. The City of Warren admitted that it owned and maintained the guardrail. Naturally the City settled with the Plaintiffs/Appellants. Nevertheless, the Plaintiffs/Appellants continued to attempt to impose liability on Trumbull County, which had no responsibility for their injuries.

Simply, Trumbull County does not have a duty to maintain guardrails – or roads – within the corporation limits of the City of Warren. More than four decades ago, the City of Warren annexed the area where the accident occurred. The official land records unequivocally established the accident involved a City guardrail and occurred in the geographical boundaries of the City. The Ohio State Patrol's investigation confirmed that. The City entered into a maintenance agreement to maintain the guardrail. Even Plaintiffs/Appellants' own expert testified the guardrail was owned by the City of Warren.

The trial court granted summary judgment in favor of Trumbull County. The Eleventh District Court of Appeals affirmed. Four decision makers (the trial court judge and a three-judge appellate panel) unanimously concluded that the Plaintiffs/Appellants' efforts to hold Trumbull County liable for injuries that occurred on another political subdivision's property was meritless.

Plaintiffs/Appellants naturally disagree with the unanimous conclusions of the lower courts, and they want another shot at arguing their case in a new forum. As an initial matter, Plaintiffs/Appellants are incorrect that the lower courts erred. The Legislature has designated that political subdivisions like a county or city only have a duty to maintain a street or highway that

lies within its respective system of roads. See R.C. 723.01; R.C. 5535.01; R.C. 5535.08. But, more immediately fatal to their present appeal, the Plaintiffs/Appellants misapprehend the nature of this Court's role. They fail to realize that this Court is not an error-correcting court. This Court's role as a court of last resort "is not to serve as an additional court of appeals on review." *State v. Bartrum*, 121 Ohio St.3d 148, 2009-Ohio-355, 902 N.E.2d 961, ¶31.

That fatal flaw aside, Plaintiffs/Appellants' claim that the unanimous lower courts did not follow this Court's precedent is simply incorrect. That precedent, *Lewis v. Laylin*, 46 Ohio St. 663, 23 N.E. 288 (1889), was plainly distinguishable, as the Eleventh District explained: The Supreme Court in *City of Steubenville v. King*, 23 Ohio St. 610 (1873) held "that a highway loses its character as a county road and becomes a municipal street when annexed by the city has not been overruled by the Supreme Court." *Ray v. City of Warren*, 2019-Ohio-4654, ¶ 42, 136 N.E.3d 538, 543. The Eleventh District further explained, "like the facts here, *King* involves city annexation of a roadway. Therefore, both *King* and our case are readily distinguishable from *Lewis*, involving the collection of a turnpike tax for the improvement of the road." (*Id.*) Further, the *Lewis* decision also was issued in 1889, well before the statutory scheme related to the designation of roads was in existence.

Moreover, Plaintiffs/Appellants do not argue that there is confusion or conflict among the intermediate appellate courts. There is none. And, the Plaintiffs/Appellants offer no meaningful explanation about how this case has state-wide importance. There is no suggestion that this fact pattern is common or will recur.

Section 2(B)(2)(e) of Article IV of the Ohio Constitution dictates that the Supreme Court of Ohio's discretionary jurisdiction is reserved for "cases of public or great general interest." Cases presenting questions and issues of public or great general interest are to be distinguished from

cases where the outcome is primarily of interest to the parties in a particular piece of litigation. *Williamson v. Rubich*, 171 Ohio St. 253, 254 (1960). This Appeal unequivocally falls into the latter category of cases referenced in *Williamson*. Plaintiffs/Appellants' self-interest notwithstanding, this Court's discretionary jurisdiction is reserved for cases addressing areas of the law that are unsettled, not to apply settled law to the facts of any particular case. See *Baughman v. State Farm Mutual Automobile Ins. Co.*, 88 Ohio St. 3d 480, 492 (2000) (Cook, J., concur).

This narrow dispute between the parties does not pose a substantial question for review. Under S.Ct.Prac.R. 7.08(B)(4)(a) and 7.08(B)(4)(b), this Court should decline jurisdiction.

II. STATEMENT OF THE CASE AND FACTS

A. Background

This matter arises from a single-vehicle accident that occurred on March 10, 2013 on Pine Avenue, S.E. in the City of Warren in Trumbull County. At approximately 6:50 a.m., Alexis Cayson was driving a 1998 Honda Passport southbound on what Plaintiffs believe to be Trumbull County Road 69 with Brian Henry, Asher Lewis, Ramone White, Daylan Ray, Brandon Murray, Kirklan Behner and Andrique Bennett as passengers. The posted speed limit on Pine Ave. SE is 35 miles per hour.

The 1998 Honda Passport was built for five people maximum, but at the time of the accident it held eight. The driver was traveling at approximately 62-70 miles per hour, according to the Ohio State Highway Patrol and Plaintiff's Expert, lost control, crossed the center line and left the roadway. The vehicle left the southbound lane, Trumbull County Road 69 located in Howland Township, and crossed the northbound lane, Pine Avenue, S.E., Warren, and then went off the east side of the roadway and landed upside down in a pond located within the corporation limits of the City of Warren.

Plaintiffs allege that the guardrail on the east side of the road was in poor condition and did not prevent the vehicle from going off the east side of the road and into the pond. They further allege that had the guardrail been in better condition it would have prevented the vehicle from going into the pond and the occupants would not have been as badly injured or died.

Defendant Trumbull County Board of Commissioners had no duty to maintain the road or the guardrail where the crash occurred. The northbound lane where this accident occurred is Pine Avenue, S.E. and is within the corporation limits of the City of Warren. The guardrail on the east side of the road where the 1998 Honda Passport left the road is also within the corporation limits of the City of Warren. Defendant Trumbull County Board of Commissioners had no duty to maintain roads, or guardrails, within the corporation limits of the City of Warren.

B. The trial court and the appellate court unanimously authorized summary judgment in favor of Trumbull County.

After full discovery and briefing, the trial court granted summary judgment in favor of Trumbull County. The trial court held, "... the guardrail with which this vehicle collided was not within the jurisdiction of the county. Rather, it was within the city limits of Warren. There is ample evidence to support this conclusion." (Trial Court Judgment Entry of 1/2/2019.) The Court noted that "Everything in the record supports the finding that the accident occurred within the jurisdictional limits of the City of Warren as well as within the area of maintenance responsibility of the City of Warren. Consequently, there are no genuine issues of material fact." *Id.* at 5.

Applying established statutory and case law, the Eleventh District Court of Appeals unanimously affirmed. "Through annexation, the east-side guardrail is within the city's territorial limits, and therefore Trumbull County was not responsible for the guardrail's maintenance." *Ray v. City of Warren*, 2019-Ohio-4654, ¶ 35, 136 N.E.3d 538, 542.

III. LAW AND ARGUMENT

Proposition of Law No. 1: As a matter of law, a county road does not lose its character as a county road where all lanes of the road are not incorporated into the City's territorial limits.

Proposition of Law No. 2: As a matter of law, a county cannot relieve itself of a statutory duty by entering into a maintenance agreement with another political subdivision.

A. The lower courts properly authorized summary judgment in favor of Trumbull County.

There is no dispute regarding the location of the east-side guardrail: i.e., as a consequence of the City of Warren's 1974 annexation, that guardrail (which caused the injury) lies within the territorial limits of the City of Warren. There is no dispute that this caused the Plaintiffs' injury. Under statutory and case law, the lower courts properly rejected the Plaintiffs' argument that the County could somehow be liable for injury that occurred on City property.

1. Trumbull County does not have a duty to maintain guardrails – or roads – within the corporation limits of Defendant City of Warren.

The Ohio Revised Code defines the roads in Ohio. There are four designations: 1. State roads, 2. County roads, 3. Township roads, and 4. Municipal streets. Ohio Revised Code Section 5535.01 reads:

The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

(A) State roads include the roads and highways of the state highway systems.

(B) **County roads include all roads which are or may be established as part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.**

(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not

prevent the board of township trustees from improving any road within its township.

(Emphasis added.)

Ohio Revised Code Section 5535.08(A) reads:

(A) The state, county, and township **shall each maintain its roads, as designated in section 5535.01 of the Revised Code**; however, the county or township, by agreement between the board of county commissioners and board of township trustees, may contribute to the repair and maintenance of the roads under the control of the other. The state, county, or township, or any two or more of them, by agreement, may expend any funds available for road construction, improvement, or repair upon roads inside a village. A village may expend any funds available for street improvement upon roads outside the village and leading to the village.

(Emphasis added.)

Although missing from Plaintiffs' memorandum in support of jurisdiction, Ohio Revised Code Section 723.01 reads:

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, **the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation**. The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code.

(Emphasis added.)

Defendant Trumbull County Board of Commissioners also has the duty to erect and maintain guardrails **along county roads, but not city streets**. Ohio Revised Code Section 5591.36 reads:

The board of county commissioners shall erect and maintain **on county roads**, where not already done, one or more guardrails on each end of a county bridge, viaduct, or culvert more than five feet high. The board also shall protect, by guardrails, all embankments with a rise of more than eight feet in height and with

a downward slope of greater than seventy degrees, where the embankments have an immediate connection **with a county road.**

(Emphasis added.)

Taken as a whole, the foregoing readily establishes that a county or a city has a legal duty to adequately maintain any street or highway that lies within its system of roads. The Trumbull County Board of Commissioners is not responsible for any roads other than county roads and are expressly not responsible for roads or guardrails within a city.

Ohio case law firmly supports the lower courts' decisions. See *Sanders v. Butler County Commissioners*, 12th Dist. Butler No. CA2000-02-033, 2000 WL 1145469 (Aug. 14, 2000). In *Sanders*, the issue was the proper application of R.C. 5591.36, which imposes a duty upon boards of county commissioners to erect and maintain guardrails in all appropriate places associated with all public highways, except state highways. After construing R.C. 5591.36 in conjunction with R.C. 723.01, *Sanders* held that the commissioners' duty to erect and maintain guardrails does not extend to roads located within the geographic boundaries of a municipality. *Id.* at *3. Instead, under R.C. 723.01, that duty lies solely with the municipality as part of its statutory duty to "care" for the roads within its jurisdiction. *Id.* See, also, *Rocco v. City of Fairview Park*, 8th Dist. Cuyahoga No. 72263, 1998 WL 57085 (Feb. 12, 1998).

Plaintiffs' argument that there is a conflict with this Court's precedent is meritless. That precedent, *Lewis v. Laylin*, 46 Ohio St. 663, 23 N.E. 288 (1889), was plainly distinguishable, as the Eleventh District explained: The Supreme Court in *City of Steubenville v. King*, 23 Ohio St. 610 (1873) held "that a highway loses its character as a county road and becomes a municipal street when annexed by the city has not been overruled by the Supreme Court." *Ray v. City of Warren*, 2019-Ohio-4654, ¶ 42, 136 N.E.3d 538, 543. The Eleventh District further explained, "like the facts here, *King* involves city annexation of a roadway. Therefore, both *King* and our case

are readily distinguishable from *Lewis*, involving the collection of a turnpike tax for the improvement of the road.” (*Id.*) Furthermore, the *Lewis* decision also was issued in 1889, well before the statutory scheme related to the designation of roads was in existence.

The law and the record are firmly established. A county does not have a duty to maintain a road that is owned by a city. And, the Plaintiffs acknowledge that the accident occurred on property that was exclusively owned by the City of Warren, not the County.

B. The lower courts also properly held that under a County-City road maintenance agreement, the City of Warren (Not the County) was responsible for the maintenance of the entire roadway where the crash occurred.

With regard to the second proposition of law, which is rendered moot by resolution of the first proposition, the Plaintiffs contend that the lower courts erred when it also found that under a County-City road maintenance agreement, Defendant City of Warren is responsible for the maintenance of the entire roadway where the crash occurred.

The lower courts properly ruled. The Eleventh District recognized that R.C. 5535.08(C)(1) expressly authorizes such agreements:

R.C. 5535.08(C)(1) governs and expressly authorizes political subdivisions, including cities and counties to agree as to duties to maintain roadways.

Per its agreement, the city had the duty to maintain the guardrail and necessarily, the liability for failure to do so. The cited cases holding to the contrary do not apply the foregoing statutes and are, therefore, not controlling or persuasive.

Ray v. City of Warren, 2019-Ohio-4654, ¶¶ 48-50, 136 N.E.3d 538, 544.

The record is clear that there is a County/City Road Maintenance Agreement between the City of Warren and Trumbull County setting forth responsibilities for maintaining certain roads which pass through both the county and city. This Agreement is enforceable under Ohio Revised Code Sections 5535.08(C)(1) and 5557.02. Ohio Revised Code Section 5535.08(C)(1) reads:

In nonemergency situations, any political subdivision having authority to construct, reconstruct, resurface, improve, repair, and maintain roads or streets may enter into

an agreement, under terms agreeable to all parties, with any other political subdivision having that authority to obtain or provide road or street construction, reconstruction, resurfacing, improvement, repair, or maintenance services. The cost, if any, of services obtained under the agreement may be paid from general fund moneys of the political subdivision receiving the services, or from any other funds available for the repair and maintenance of roads or streets within that political subdivision.

Ohio Revised Code Section 5557.02 reads:

The board of county commissioners may construct a proposed road improvement into, within, or through a municipal corporation, when the consent of the legislative authority of such municipal corporation has been first obtained. Such consent shall be evidenced by the proper action of the legislative authority, entered upon its records, and the legislative authority may assume and pay such proportion of the cost of that part of the proposed improvement within the municipal corporation as agreed upon between the board and legislative authority. If no part of the cost of the proposed improvement is assumed by the municipal corporation, no action on its part, other than the giving of the consent above referred to, shall be necessary, and all other proceedings in connection with such improvement shall be conducted in the same manner as though the improvement were situated wholly outside a municipal corporation.

According to *Village of Peninsula v. County of Summit*, political subdivisions may voluntarily assume a duty to maintain a road:

“... [W]e do not preclude those streets from thereafter becoming part of a county road system by voluntary action of the county council pursuant to statutory authority and with the consent of the municipality. (See R.C. 5557.02) Once the improvement is done, it may be maintained in the same manner, see R.C. 5557.08.”

Village of Peninsula v. Summit County, 27 Ohio App.3d 252, 254, 500 N.E.2d 884 (9th Dist.1985).

Plaintiffs' citations to the *Starcher* and *White* cases are inapplicable. The City of Warren here assumed primary responsibility by agreement as well as by ownership and control of the relevant guardrail involved in the accident. The *Starcher v. Logsdon*, 66 Ohio St.2d 57, 419 N.E.2d 1089 (1981) case involved a plaintiff that sued two counties after the plaintiff's decedent drove into a creek bed and claimed there was no warning that a bridge had been removed. Here, like the defendant "second county" in *Starcher* who had no responsibility for a bridge repair, Trumbull

County did not accept primary responsibility for guardrail repair through an agreement or otherwise. The *Starcher* court affirmed judgment as a matter of law in favor of the "second county" that had no responsibility either through statute or agreement. Here, like the second county, Trumbull County does not have any maintenance responsibility. Moreover, if anything, *Starcher* firmly supported summary judgment in favor of Trumbull County. And also unlike the present case, *White v. ODOT*, 56 Ohio St.3d 39, 564 N.E.2d 462 (1990) did not involve a guardrail that was within the jurisdiction of a city. The instant case does not involve a cooperative effort to fulfill a maintenance duty of a guardrail. That responsibility is firmly upon the City of Warren. Again, *White* supports summary judgment because it refused to impose an implied concurrent duty on another entity (ODOT) to ensure maintenance. Plaintiffs want to impose the same type of implied duty over property that does not belong to the County.

Not only is the portion of the road involved in the crash not a Trumbull County road, Defendant City of Warren had agreed to take the duty of maintaining it upon itself.

IV. CONCLUSION

This Court should decline jurisdiction.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction has been electronically filed and served by regular U.S. mail, postage prepaid, on January 22, 2020 to the following:

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