

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff-Appellee,

CASE NO.: 2022-1448

**On Appeal from the Scioto County Court
of Appeals
Fourth Appellate District**

-vs-

C.A. Case No. 22-CA-3994

LISA THOMAS,

Defendant-Appellant,

APPELLEE’S MEMORANDUM IN OPPOSITION TO JURISDICTION

ATTORNEY FOR APPELLEE:

SHANE A. TIEMAN
Prosecuting Attorney
Scioto County, Ohio

JAY S. WILLIS, # 0064884
Assistant Prosecuting Attorney
(Counsel of Record)

612 6th Street, Suite E
Portsmouth, Ohio 45662
(740) 981-3112 Telephone
jwillis@sciotocountypo.org

Email: jwillis@sciotocountypo.org

ATTORNEY FOR APPELLANT:

James T. Boulger, #0033873
(Counsel of Record)
45 W. 4th St.
Chillicothe, Ohio 45601
(740) 775-5312
(740) 775-6189-Fax
Email: boulgerlaw@horizonview.net

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
THE COURT SHOULD NOT ACCEPT THIS MATTER FOR REVIEW.....	4
This matter is not a case of public or great general interest involving a felony prosecution.....	4
STATEMENT OF THE CASE AND FACTS	6
ARGUMENT IN OPPOSITION TO JURISDICTION	8
Appellant’s Proposition of Law No. 1:	8
An order that denies an employee of a political subdivision the immunity from criminal liability provided under R.C. 2151.412 (H)(1)(a)(i-iv) is a final appealable order under R.C. 2744.02(C) and is subject to an interlocutory appeal.....	8
Proposition of Law No. II:	10
A County Children’s Services Board case supervisor, who, after the investigation of a report of abuse or neglect to the agency, was involved in the filing of a complaint in a juvenile court which secured an order of temporary custody of the child with the agency and their subsequent placement, participated in a judicial proceeding for purposes of R.C.2151.421 (H)(1)(a)(iv).	10
Proposition of Law No. III:.....	11
Employees of County Children’s Services Boards, acting within the scope of their employment, are immune from criminal liability under R.C. 2919.22. They are not persons for purpose of any of the five categories of “persons” subject to prosecution under the statute. Such employees are immune from both civil and criminal liability based on alleged violation of R.C. 2919.22.	11
CONCLUSION.....	11
CERTIFICATE OF SERVICE	12

TABLE OF AUTHORITIES

Cases

<i>Campbell v. Burton</i> (2001), 92 Ohio St.3d 336, 750 N.E.2d 539.....	8
<i>City of Cleveland v. Graham</i> , 8 th Dist. Cuyahoga No. 108232, 2020-Ohio-379	9, 10, 11
<i>Est. of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities</i> , 2004-Ohio-2629, ¶ 23, 102 Ohio St. 3d 230, 234–35, 809 N.E.2d 2	8, 9
<i>State v. Daniel Groves</i> , 4 th Dist. Scioto No. 20CA3902, 2022-Ohio-442	6
<i>Summerville v. Forest Park</i> , 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522	9

Statutes

R.C. §2151.421 (H).....	3
R.C. §2744.02	8
R.C. 2744.02(B)(5)	8
R.C. 2744.02(C),.....	9
R.C. §2919.22	3
R.C. §3721.22	4

Rules

Crim. R. 12.....	3
------------------	---

THE COURT SHOULD NOT ACCEPT THIS MATTER FOR REVIEW

This matter is not a case of public or great general interest involving a felony prosecution.

This matter arose from the trial court's denial of Appellant's Motion to Dismiss her indictment based upon claims of statutory immunity pursuant to R.C. §2919.22 and R.C. §2151.421 (H). The State argued both that the immunity matter was not ripe for determination in a pre-trial Motion to Dismiss pursuant to Crim. R. 12, and that the Defendants were not entitled to immunity.

The trial court evaluated the claims made by Appellant pursuant to R.C. §2744.02 and found that section applies in a civil action, not a criminal proceeding. Further, the trial court properly found it was prohibited from evaluating the sufficiency of the State's evidence as to whether the defendants were persons as set forth in the statute pursuant to Crim. R. 12. Ultimately, the trial court properly found that even if the immunity granted by R.C. §2744.02 were applicable in a criminal proceeding, the charges in the indictment would be exempted from immunity by the nature of the allegations of recklessness and intent. Therefore, the trial court properly denied the motion to dismiss due to statutory immunity pursuant to R.C. §2744.02.

Regarding R.C. §2151.421 immunity, the trial conducted an extensive analysis and ultimately determined that none of the charges against the defendants related to any participation in the making of reports by a mandatory reporter and denied the Motion to Dismiss. Further, the trial court properly found the Appellant's actions were not related to activities in a judicial proceeding resulting from a mandatory reporting. Specifically, the trial court stated that Appellant was charged not "for what they did in Court, but rather what they failed to do and ignored after the initial court action. Therefore, this Court

finds that defendants are not entitled to immunity pursuant to R.C. §2151.421(H)(1)(a)(iv).” (Trial Court’s Entry filed July 28, 2022).

The State of Ohio agrees with the decision of the Fourth Appellate District Court in this matter. The Fourth District granted Appellee’s Motion to Dismiss Appellant’s appeal finding that the denial of Appellant’s Motion to Dismiss by the trial court was not a final appealable order because it was not determinative of the action, nor did it prevent a judgment. Therefore, the only issue properly raised for consideration before this court at this stage is whether the trial court’s denial of Appellant’s Motion to Dismiss was a Final Appealable Order. In other words, did the Appellate Court err by granting the State’s Motion to Dismiss finding there was no Final Appealable Order?

Appellant’s claim that the decision in this matter will equally apply to immunity claims stemming from R.C. §3721.22 is tenuous at best and not properly before this court. While R.C. §3721.22 does provide for immunity from criminal prosecution that section is distinctively different than the sections applicable in this matter inasmuch as it specifically addressed nursing home abuse, neglect, and exploitation, and serves only as a red herring in this case.

Appellee urges this court to deny Appellant’s appeal so this matter may proceed to trial. Thereafter, Appellant’s immunity claims can still be addressed properly on appeal if she either enters a No Contest plea, or is found guilty by a jury. Appellant suffers no prejudice at this stage since her immunity claim is preserved for later appeal after conviction. In essence, Appellant’s claims regarding immunity are premature and are not yet ripe for consideration or review at this time and this court should deny Appellant’s request.

STATEMENT OF THE CASE AND FACTS

On January 10, 2019, Jessica and Daniel Groves, Sr. went to the Southern Ohio Medical Center because Jessica was in labor. Jessica Groves refused to answer questions posed by the maternity staff, initially refused a urine screen, and appeared to be under the influence of drugs. Testing revealed Jessica Groves was positive for Methamphetamines, Fentanyl, and Opiates. Dylan Groves was born the same day, exhibited signs of drug withdrawal, and his cord blood sample exhibited positive drug tests for Amphetamines, Methamphetamine, Fentanyl, Opiates, and Morphine.

Scioto County Children's Services Board (hereinafter SCCSB) placed Dylan Groves in Foster Care on January 15, 2019. Appellant, Lisa Thomas, was the case supervisor on Baby Dylan's case. A Safety Plan was developed and Dylan Groves was placed back with Daniel Groves, Sr. on January 28, 2019 with restrictions regarding Jessica Groves having limited contact and not living in the home.

Both parents were noncompliant with the case plan developed by SCCSB. Daniel Groves, Jr. was removed from the home by SCCSB after school on April 24, 2020. The last time Patricia Craft, the ongoing caseworker from SCCSB, saw Dylan Groves was March 28, 2019.

Appellee adopts the factual findings made by the Fourth District Court of Appeals in *State v. Daniel Groves*, 4th Dist. Scioto No. 20CA3902, 2022-Ohio-442, ¶¶1-50 as if fully rewritten herein. Daniel Groves was acquitted of Aggravated Murder, but convicted of Murder, Kidnapping, Child Endangerment, Tampering with Evidence, Gross Abuse of a Corpse, Interference with Custody, and Felonious Assault and sentenced to 47 years to Life. Jessica Groves was convicted of Aggravated Murder, Kidnapping, Endangering

Children, Tampering with Evidence, Gross Abuse of a Corpse, and Felonious Assault and sentenced to Life without Parole, plus an additional 32 years.

On July 8, 2020, Annabel Greene, who had been placed with her paternal grandfather and step-grandmother by SCCSB, with Appellant acting as the case supervisor, died due to brutal sexual and physical abuse at the hands of said paternal grandfather, Richard Greene, and step-grandmother, Sonja Greene. Richard and Sonja Greene were convicted of Aggravated Murder and Sonja Greene was also convicted of two counts of Felonious Assault for the injuries to Annabel's two brothers. Richard Greene was sentenced to Life Without Parole for 20 years. Sonja Greene was sentence to Life Without Parole for 29 years.

At the time, Defendant Thomas as supervisor, and Co-Defendant, Renee Ginn as the caseworker, made this decision to place the children with the paternal grandfather and step-grandmother, the circumstances were as follows:

- 1) Defendants were aware that Richard Greene, Junior was placed in Children Services custody for alleged abuse he had suffered at the hands of his father.
- 2) Sonja Greene had a conviction for child endangering for physically abusing one of her children. This abuse was noted and substantiated in the Children Services records.
- 3) Defendants ignored the fact that the children had previously been removed from the Greene's by Investigator Porter.
- 4) Defendants failed to do a required background check and otherwise made no efforts to check alternate sources for information.
- 5) Defendants had ignored or were unresponsive to the concerns expressed by the court-appointed special advocates on items one and two above. Defendants failed to adequately communicate with said CASAs.
- 6) Despite the above facts, the Defendants caused the children to be placed with the Greene's which led to one child's death and serious physical harm to the other two children.
- 7) Defendants' inspections of the home and reports on visits as caseworker and supervisor did not reflect the true condition of the home, the well-being of the children or the condition of the home.

Appellant and co-defendant, Renee Ginn, were indicted for two counts of Endangering Children, Felonies of the Third Degree, and two counts of Endangering Children, Misdemeanors of the First Degree. Both filed Motions to Dismiss the Indictments asserting immunity from criminal liability. The Trial court denied the Motions to Dismiss and both Defendants appealed. The Fourth District Appellate Court granted the State's Motion to Dismiss and both appeals were dismissed for lack of jurisdiction due to lack of final appealable orders.

Co-Defendant, Renee Ginn, has now entered a plea of no contest to three amended charges of Dereliction of Duty, Second Degree Misdemeanors, and sentenced to one year of community control with a ninety (90) day jail sentence suspended.

ARGUMENT IN OPPOSITION TO JURISDICTION

Appellant's Proposition of Law No. 1:

An order that denies an employee of a political subdivision the immunity from criminal liability provided under R.C. 2151.412 (H)(1)(a)(i-iv) is a final appealable order under R.C. 2744.02(C) and is subject to an interlocutory appeal.

Appellee respectfully disagrees with Proposition of Law No. 1 offered by Appellant. The Fourth District Appellate Court properly decided the appeal in this matter. Appellant ignores the thorough analysis conducted by the Fourth District Decision in this matter. The Fourth District Appellate Court found R.C. §2744.02 applies to civil actions only and this matter involves a question of immunity in a criminal case.

Appellee agrees that the language of R.C. §2744.02 is unambiguous. Appellant ignores the fact that criminal liability is mentioned nowhere in that statute. Earlier incarnations of R.C. § 2744.02 did not delineate civil or criminal liability and within the meaning of R.C. 2744.02(B)(5), the term "liability" referred to either criminal or civil liability. *Butler v. Jordan*, 2001-Ohio-204, 92 Ohio St. 3d 354, 357, 750 N.E.2d 554, 557

However, since the statute was revised, this court has found the liability expressly imposed pursuant to R.C. §2744.02 (B)(5) is civil liability, not criminal liability:

In *Campbell v. Burton* (2001), 92 Ohio St.3d 336, 750 N.E.2d 539, we interpreted an earlier version of R.C. 2744.02(B)(5), which contained the following language: **“a political subdivision is liable for injury, death, or loss to person or property when liability is expressly imposed upon the political subdivision by a section of the Revised Code * * *.”**² We held there that the term “liability” *235 referred to either civil or criminal liability.³ Id. at 341, 750 N.E.2d 539. *Est. of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 2004-Ohio-2629, ¶ 23, 102 Ohio St. 3d 230, 234–35, 809 N.E.2d 2, 7

This court noted in Footnote 3 of that decision:

{¶ a} Since *Campbell*, and since this case arose, the General Assembly has amended R.C. 2744.02(B)(5) to permit a political subdivision to be sued under that subdivision only when the liability expressly imposed by a section of the Revised Code is civil liability:
{¶ b} “In addition to the circumstances described in division (B)(1) to (B)(4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code * * *. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term ‘shall’ in a provision pertaining to a political subdivision.” 2002 Am.Sub.S.B. No. 106, effective April 9, 2003. *Est. of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, see Footnote 3

Appellant cites *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522 for the proposition that pursuant to R.C. 2744.02(C), an order that denies an employee of a political subdivision immunity from liability under any provision of law is a final appealable order. The 8th Appellate District, in a more recent decision, *City of Cleveland v. Graham*, 8th Dist. Cuyahoga No. 108232, 2020-Ohio-379, distinguished *Summerville* in a criminal case involving the denial of a Motion to Dismiss for lack of a Final Appealable Order. That decision specifically noted that *Summerville*

involved a Section 1983 claim and despite the holding in *Summerville* specifically held “Chapter R.C. 2744 is relative to civil liability, not criminal liability, and as such Graham’s claim of common law immunity for criminal charges does not arise from the chapter. There is no “other provision of law” – that is, the United States or Ohio Constitution, state or federal statutes or rules; or provisions of charters, ordinances, resolutions, and rules of political subdivisions – that makes the order here subject to immediate review.” *City of Cleveland v. Graham*, 2020-Ohio-379, ¶ 20, appeal not allowed sub nom. *Cleveland v. Graham*, 2020-Ohio-3634, ¶ 20, 159 Ohio St. 3d 1435, 148 N.E.3d 592 The 8th District specifically held the judgment denying a Motion to Dismiss was not a final, appealable order.

Appellee respectfully requests this court follow the reasoning stated in *City of Cleveland v. Graham* and deny Appellant’s request to review this matter and uphold the 4th District Appellate Decision that there was no final appealable order.

Proposition of Law No. II:

A County Children’s Services Board case supervisor, who, after the investigation of a report of abuse or neglect to the agency, was involved in the filing of a complaint in a juvenile court which secured an order of temporary custody of the child with the agency and their subsequent placement, participated in a judicial proceeding for purposes of R.C.2151.421 (H)(1)(a)(iv).

Appellee respectfully disagrees with this Proposition of Law. Further, Appellee contends the immunity issues propounded by Appellant are not yet ripe for consideration and not properly before this court. As stated previously, the only issue properly raised at this juncture is the limited issue whether the trial court’s denial of the motion to dismiss in a criminal case is a final appealable order. The State agrees with the 4th District determination as well as the 8th District decision in *City of Cleveland v. Graham*, *supra*.

Therefore, Appellee respectfully requests that the appellate court decision be affirmed and this matter not be accepted for review.

Proposition of Law No. III:

Employees of County Children's Services Boards, acting within the scope of their employment, are immune from criminal liability under R.C. 2919.22. They are not persons for purpose of any of the five categories of "persons" subject to prosecution under the statute. Such employees are immune from both civil and criminal liability based on alleged violation of R.C. 2919.22.

Appellee respectfully disagrees with this Proposition of Law. Further, Appellee contends the immunity issues propounded by Appellant are not yet ripe for consideration and not properly before this court. As stated previously, the only issue properly raised at this juncture is the limited issue whether the trial court's denial of the motion to dismiss in a criminal case is a final appealable order. The State agrees with the 4th District determination as well as the 8th District decision in *City of Cleveland v. Graham*, supra. Therefore, Appellee respectfully requests that the appellate court decision be affirmed and this matter not be accepted for review.

CONCLUSION

WHEREFORE, based upon the foregoing the State of Ohio respectfully requests this Court decline jurisdiction over this matter. The trial court applied the correct interpretation of the law in this matter, the appellate decision finding a lack of a final appealable order was proper, and Appellant has failed to show either a substantial constitutional question, or a public or general interest sufficient for this court to accept jurisdiction.

ATTORNEYS FOR APPELLANT
SHANE A. TIEMAN, #0070142
Prosecuting Attorney

/s Jay S. Willis

Jay S. Willis, #00664884
Assistant Prosecuting Attorney

612 Sixth Street, Suite E
Portsmouth, Ohio 45662
(740) 981-3112

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon James T. Boulger, counsel for Appellant, by email at boulgerlaw@horizonview.net, this 15th day of December, 2022.

s/Jay S. Willis

By: _____

Jay S. Willis, #00664884
Assistant Prosecuting Attorney