

FOGLE ET AL., APPELLEES, v. VILLAGE OF BENTLEYVILLE ET AL., APPELLANTS.

[Cite as *Fogle v. Bentleyville*, 116 Ohio St.3d 301, 2007-Ohio-6454.]

*Political subdivision — Immunity — Final, appealable order — Court of appeals’ judgment reversed on the authority of *Hubbell v. Xenia* and cause remanded.*

(No. 2007-1433 — Submitted November 6, 2007 — Decided
December 13, 2007.)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 88375, 2007-Ohio-2913.

{¶ 1} The discretionary appeal is accepted.

{¶ 2} The judgment of the courts of appeals is reversed on the authority of *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, and the cause is remanded to the court of appeals with instructions for the court of appeals to conduct a de novo review of the law and facts. If, after that review, only questions of law remain, the court of appeals may resolve the appeal. If genuine issues of material fact remain, the court of appeals may remand the cause to the trial court for further development of the facts necessary to resolve the immunity issue.

MOYER, C.J., and LUNDBERG STRATTON, O’CONNOR, LANZINGER, and CUPP, JJ., concur.

PFEIFER, J., dissents for the reasons stated in his dissenting opinion in *Hubbell v. Xenia*.

O’DONNELL, J., dissents.

Michael B. Pasternak, for appellees.

SUPREME COURT OF OHIO

Tomino & Latchney, L.L.C., and Nick C. Tomino, for appellants.
