

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[M.S.],	:	
Plaintiff-Appellee,	:	
v.	:	No. 25AP-458 (C.P.C. No. 23CV-1200)
South-Western City School District et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on August 20, 2026

On brief: *Cooper Elliott, Rex H. Elliott, Spencer C. Meador,* and *Spencer J. Hattemer*, for appellee. **Argued:** *Spencer J. Hattemer*.

On brief: *Reminger Co., L.P.A., and Melvin J. Davis*, for appellants. **Argued:** *Melvin J. Davis*.

APPEAL from the Franklin County Court of Common Pleas
JAMISON, J.

{¶ 1} In this case involving the sexual abuse of a minor by her teacher, defendant-appellants, South-Western City School District (“SWCSD”), South-Western City School District Board of Education (“BOE”), and Tresa Davis, appeal the denial of their motion for summary judgment, in which they asserted statutory immunity from civil liability under R.C. Chapter 2744. After a thorough review of the law and the record, we affirm the trial court’s denial of summary judgment in part, and we reverse it in part. We remand the matter to the trial court for further proceedings.

I. BACKGROUND

A. Factual Summary

{¶ 2} From 2011 to 2013, plaintiff-appellee, M.S, attended SWCSD’s Norton Middle School as a student. During M.S.’s time there, Davis served as the assistant

principal and then the principal of the school. Benjamin Rutan, who at the time was in his early thirties, was M.S.'s eighth-grade English teacher. That year, Rutan began engaging in inappropriate conduct toward M.S., giving her preferential treatment in class, initiating physical contact such as holding hands and having her sit on his lap, and sending her romantic messages on her cell phone.

{¶ 3} Rutan's inappropriate relationship with M.S. continued and escalated throughout the summer of 2013. During that time, while serving as the middle school football coach, Rutan began kissing M.S. in private in the locker room. The two had occasion to be together because M.S. had volunteered to be the statistician for the team.

{¶ 4} Rutan began a sexual relationship with M.S. later in the summer of 2013, which continued into the following school year. Although M.S. no longer attended Norton Middle School, but rather a high school in a different district, she continued returning to Norton Middle School to volunteer with the middle school sports teams that Rutan coached and to take part in a mentorship program in which Rutan served as her mentor. Rutan's sexual abuse toward M.S. continued throughout the remainder of her time in high school and carried on even after she graduated and enrolled in a nearby college.

{¶ 5} On November 16, 2021, M.S. reported Rutan's conduct to local law enforcement. To gain proof of his conduct, law enforcement equipped M.S. with a recording device which she wore while speaking with Rutan about their relationship. During their conversation, Rutan made incriminating admissions regarding his sexual abuse towards her. Based on these admissions, Rutan was arrested and criminally charged. SWCSD was notified of Rutan's arrest and placed him on administrative leave the same day. On December 27, 2021, Rutan submitted a resignation letter to SWCSD explaining he was resigning "from all positions of employment." (Feb. 23, 2023 Compl. at ¶ 76.) Thereafter, in January 2024, Rutan pleaded guilty to two felony counts of unlawful sexual conduct with a minor and was sentenced to six years in prison.

B. Complaint

{¶ 6} On February 23, 2023, while criminal charges were pending against Rutan, M.S. filed a civil complaint for damages against Rutan, SWCSD, BOE, Davis, and numerous other individuals, including teachers and administrators, associated with the district at the time the sexual abuse occurred. The complaint asserted six causes of action.

{¶ 7} Count 1 alleged negligent retention and supervision against all defendants, except Rutan. M.S. alleged that they negligently retained and supervised Rutan as a teacher

and coach despite either observing his inappropriate conduct toward her or knowing, or having reason to know, of such conduct. M.S. further alleged that defendants failed to adequately train and educate district staff on recognizing warning signs of employee sexual misconduct and on their obligation to report suspected misconduct. Finally, Count 1 alleged that defendants' negligent retention and supervision of Rutan amounted to negligent, willful, wanton, and reckless misconduct that proximately caused M.S.'s injuries.

{¶ 8} Count 2 alleged negligence per se against all defendants, except Rutan. M.S. asserted that defendants knew, or had reason to suspect, that she had suffered or faced a threat of injury, including sexual battery, at the hands of Rutan. She alleged that, pursuant to R.C. 2151.421, defendants had a legal duty to report their knowledge or suspicions of abuse to Franklin County Child Protective Services to facilitate an investigation. According to the complaint, defendants failed to make the required reports, thereby violating R.C. 2151.421, constituting negligence per se.

{¶ 9} Count 3 alleged negligence and recklessness against all defendants, including Rutan. M.S. alleged that, at all relevant times, each defendant owed her a duty to exercise reasonable care to ensure her safety during school hours, while participating in school-sponsored events and athletic activities, and while she was on the premises of Norton Middle School. Count 3 further alleged that defendants breached this duty through negligent, willful, wanton, and reckless conduct.

{¶ 10} Count 4 alleged negligent security against all defendants, except Rutan. M.S. alleged that Rutan engaged in sexual contact with her on the premises of Norton Middle School before, during, and after school, as well as on weekends and holidays when the school was closed. She further alleged that defendants had actual and/or constructive knowledge that, by virtue of his position as a teacher and coach, Rutan had unrestricted access to the school grounds, yet they failed to implement reasonable security measures to prevent him from bringing a minor student onto school property outside normal school hours. Count 4 also alleged that defendants failed to train employees regarding appropriate security measures that would protect minor students. This count noted that after Rutan's arrest, SWCSD modified its alarm system to limit after-hours access to the school buildings to custodians and other authorized personnel only. M.S. alleged that she suffered injuries as a direct and proximate result of defendants' failure to provide adequate security and surveillance of Norton Middle School's premises.

{¶ 11} Count 5 alleged negligent and intentional infliction of emotional distress against all defendants. M.S. alleged that defendants “engaged in a negligent and reckless course of unreasonable and offensive conduct by retaining Rutan despite his clear inappropriate behavior.” (Compl. at ¶ 108.) She further alleged that defendants’ actions and omissions created “a substantial risk of sexual abuse and harassment to female students and [M.S.]” *Id.* Count 5 asserted that defendants acted intentionally or recklessly, knowing that their conduct would cause M.S. severe emotional distress, and that their conduct was extreme and outrageous.

{¶ 12} Count 6 asserted a claim for punitive damages against all defendants. M.S. alleged that defendants intentionally, deliberately, and recklessly violated duties owed to her and acted with wanton and reckless disregard for her rights and safety, thereby causing her harm.

{¶ 13} Defendants filed answers to the complaint, and discovery commenced. M.S. subsequently dismissed all defendants from the action, except SWCSD, BOE, and Davis.

C. Summary Judgment

{¶ 14} On March 17, 2025, SWCSD and Davis filed a joint motion for summary judgment, asserting that they were entitled to statutory immunity, under R.C. Chapter 2744, with respect to all of M.S.’s claims.

{¶ 15} SWCSD argued that it was immune from civil liability under R.C. 2744.02(A)(1), which generally grants political subdivisions immunity for acts or omissions undertaken in connection with governmental or proprietary functions. Although R.C. 2744.02(B) provides limited exceptions to that immunity, SWCSD maintained that none applied to M.S.’s negligence-based claims, including negligent retention and supervision, negligence per se, negligence/recklessness, and negligent security. SWCSD additionally argued that M.S.’s negligence per se claim, which was predicated on an alleged violation of the mandatory child abuse reporting requirements set forth in R.C. 2151.421, also failed because R.C. 2151.421 does not expressly impose civil liability on political subdivisions for a failure to report, as required by R.C. 2744.02(B)(5) to reinstate liability.

{¶ 16} SWCSD further asserted that it was immune from M.S.’s claim for intentional infliction of emotional distress because no exception to political subdivision immunity exists for intentional torts. Accordingly, it argued that the intentional infliction of emotional distress claim failed as a matter of law.

{¶ 17} Finally, SWCSD argued that it was immune from M.S.'s claim for punitive damages because, pursuant to R.C. 2744.05(A), punitive damages may not be awarded against a political subdivision in an action arising from an alleged act or omission connected with a governmental or proprietary function.

{¶ 18} Davis, as an employee of a political subdivision rather than a political subdivision itself, argued that she was entitled to immunity under R.C. 2744.03(A)(6). Specifically, she maintained that R.C. 2744.03(A)(6)(b) preserves immunity for employees unless an employee acts with malicious purpose, in bad faith, or in a wanton or reckless manner. Davis asserted that she had no knowledge of any sexual or otherwise inappropriate conduct by Rutan toward M.S. during the relevant time period and was likewise unaware of any rumors suggesting such misconduct occurred. According to Davis, she first learned of the allegations only after Rutan's arrest years later. Davis thus argued that absent any knowledge of the alleged abuse, her failure to report the abuse or investigate further could not reasonably be characterized as malicious, in bad faith, or wanton or reckless.

{¶ 19} In opposition to defendants' motion for summary judgment, M.S. conceded that SWCSD could not be held liable for intentional torts or subjected to punitive damages. She nevertheless argued that SWCSD remained liable on her negligence claims based on the conduct of its employees in failing to report or investigate the abuse. In support of that argument, M.S. relied on *Yates v. Mansfield Bd. of Edn.*, 2004-Ohio-2491.

{¶ 20} The trial court ultimately granted summary judgment in favor of SWCSD on Count 5, alleging intentional infliction of emotional distress, and Count 6, seeking punitive damages. The court denied SWCSD's motion for summary judgment as to all other remaining claims. It also denied Davis's request for summary judgment on all claims.

II. ASSIGNMENTS OF ERROR

{¶ 21} On appeal to this court, SWCSD and Davis assign the following as trial court errors:

1. Because R.C. 2151.421 does not mention political subdivisions let alone expressly impose liability on them, the trial court erred by finding that the South-Western City School District Board of Education was not entitled to political subdivision immunity.
2. Because there is no evidence that Tresa Davis was made aware of any conduct that would lead to a reasonable

suspicion that Ben Rutan had sexually assaulted a student, the trial court erred by denying her political subdivision immunity.

III. STANDARD OF REVIEW

{¶ 22} “Whether a party is entitled to immunity is a question of law properly determined by the court prior to trial pursuant to a motion for summary judgment.” *Pelletier v. Campbell*, 2018-Ohio-2121, ¶ 12, citing *Conley v. Shearer*, 1992-Ohio-133, ¶ 25-29; *Riscatti v. Prime Properties Ltd. Partnership*, 2013-Ohio-4530, ¶ 17.

{¶ 23} We review a trial court’s summary judgment denial of statutory immunity de novo, applying the same Civ.R. 56 summary judgment standard as the trial court. See *Hubbell v. Xenia*, 2007-Ohio-4839, ¶ 21. “De novo review means the reviewing court independently analyzes the record while giving no deference to the trial court’s decision.” *Allen v. Marre*, 2026-Ohio-1186, ¶ 7 (10th Dist.), citing *Johnson v. Am. Italian Golf Assn. of Columbus*, 2018-Ohio-2100, ¶ 13 (10th Dist.).

{¶ 24} Summary judgment is appropriate under Civ.R. 56 when no genuine issue exists as to any material fact and, viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion, that conclusion being adverse to the party opposing the motion. See *Franks v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-1519, ¶ 5 (10th Dist.); see also *Grafton v. Ohio Edison Co.*, 1996-Ohio-336, ¶ 10.

{¶ 25} On summary judgment, the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. See *Dresher v. Burt*, 1996-Ohio-107, ¶ 17. This burden cannot be satisfied through conclusory assertions; rather, the movant must identify specific evidence of the type permitted under Civ.R. 56(C) affirmatively demonstrating that the nonmoving party lacks evidence to support its claims. *Id.*; *Vahila v. Hall*, 1997-Ohio-259, ¶ 19. If the moving party satisfies this burden, summary judgment is appropriate unless the nonmoving party responds by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Id.*; *Vahila* at ¶ 19; Civ.R. 56(E).

{¶ 26} A fact is material if it “ ‘might affect the outcome of the suit under the governing law’ of the case.” *Oko v. Cleveland Div. of Police*, 2021-Ohio-2931, ¶ 23 (8th Dist.), quoting *Turner v. Turner*, 1993-Ohio-176, ¶ 8, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A factual dispute is ‘genuine’ only if ‘it allows reasonable

minds to return a verdict for the nonmoving party.’ ” *Huntington Natl. Bank v. Blount*, 2013-Ohio-3128, ¶ 32 (8th Dist.), quoting *Sysco Food Servs. of Cleveland v. Titan Devs., Inc.*, 1995 Ohio App. LEXIS 4762, *7 (9th Dist. Oct. 25, 1995).

{¶ 27} The statutory scheme for the tort liability of political subdivisions and their employees is set forth in R.C. Chapter 2744, the Political Subdivision Tort Liability Act. *See McConnell v. Dudley*, 2019-Ohio-4740, ¶ 20. “ ‘Determining whether a political subdivision is immune from tort liability pursuant to R.C. Chapter 2744 involves a familiar, three-tiered analysis[.]’ ” *Id.*, quoting *Pelletier*, 2018-Ohio-2121, at ¶ 15.

{¶ 28} Under the first tier, a general grant of immunity is given to political subdivisions by R.C. 2744.02(A)(1). *See McConnell* at ¶ 21. Specifically, R.C. 2744.02(A)(1) provides that “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.”

{¶ 29} The second tier of the immunity analysis involves determining whether an exception to the general grant of immunity found in R.C. 2477.02(A)(1) applies. *See McConnell* at ¶ 22. Specifically, R.C. 2477.02(B) sets forth five exceptions to immunity that would reinstate liability to the political subdivision. *See id.* One of those exceptions that reinstates liability for political subdivisions is 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.” R.C. 2744.02(B)(2).

{¶ 30} If an exception to immunity under R.C. 2744.02(B) applies, then under the third tier of the sovereign-immunity analysis, a court must determine whether any of the defenses found in R.C. 2744.03 apply to reinstate the political subdivision’s immunity.

{¶ 31} Regarding statutory immunity for employees, “R.C. 2744.03(A)(6) ‘sets forth the immunity of political-subdivision employees and the exceptions thereto.’ ” *Stevens v. Maxson*, 2013-Ohio-5792, ¶ 12 (10th Dist.), quoting *Anderson v. Massillon*, 2012-Ohio-5711, ¶ 20. This provision generally grants employees of political subdivisions immunity from civil liability for harm they have caused, unless one of the following three exceptions is met: (1) their actions or omissions fall manifestly outside the scope of their employment or official responsibilities, (2) their acts or omissions are malicious, in bad faith, or wanton or reckless, or (3) liability is expressly imposed upon the employee by a section of the Ohio

Revised Code. *See Cramer v. Auglaize Acres*, 2007-Ohio-1946, ¶ 17; R.C. 2744.03(A)(6)(a) through (c).

{¶ 32} The burden is initially on the political subdivision and/or employee of a political subdivision to both assert and demonstrate by means of appropriate evidence their entitlement to immunity. *See Mullins v. Liberty Twp.*, 2022-Ohio-4350, ¶ 45 (7th Dist.); *see also Estate of Cook v. Montville Twp.*, 2024-Ohio-5690, ¶ 9 (DeWine, J., dissenting). If this burden is so met, then the burden shifts to the plaintiff to demonstrate that one of the above-mentioned exceptions to immunity applies, thereby foreclosing an immunity defense. *See id.*; *see also Estate of Cook* at ¶ 9.

IV. LEGAL ANALYSIS

{¶ 33} For ease of discussion, we address the assignments of error in reverse order.

A. Liability for Davis

{¶ 34} The second assignment of error challenges the trial court's denial of Davis's motion for summary judgment on all claims. Davis contends that M.S. failed to produce sufficient evidence at the summary judgment stage demonstrating that Davis was aware of any inappropriate conduct between Rutan and M.S., or between Rutan and any other student, that would have given her reasonable cause to suspect that Rutan had an inappropriate relationship with M.S. or any other student, such that she would have had a duty to investigate further or report her concerns to Franklin County Child Protective Services. Davis maintains that she, in fact, had no knowledge of any such inappropriate conduct and, therefore, had no duty to report Rutan pursuant to R.C.2151.421.

{¶ 35} Davis further maintains that, due to her lack of knowledge, any alleged actions and/or omissions regarding her failure to investigate, report, or supervise Rutan cannot be deemed reckless, wanton, malicious, or done in bad faith. Accordingly, Davis contends that she is entitled to summary judgment on the remainder of M.S.'s negligence claims and her claim for intentional infliction of emotional distress because, as an employee of a political subdivision, she is immune from liability, under R.C. 2744.03(A)(6)(b), unless her actions or inactions are reckless, wanton, malicious, or done in bad faith.

{¶ 36} We disagree with Davis's characterization of the evidence and conclude that, at least as far as the summary judgment standard goes, M.S. presented sufficient evidence to create a genuine issue of material fact as to whether Davis had a duty to report under R.C. 2151.421 and whether Davis acted recklessly or wantonly with respect to the remaining negligence claims and the intentional tort claim.

1. Duty to Report Under R.C. 2151.421

{¶ 37} Employees of political subdivisions are not immune from liability if “civil liability is expressly imposed upon the employee by a section of the Revised Code.” R.C. 2744.03(A)(6)(c). R.C. 2151.421(M) expressly imposes civil liability on “[w]hoever violates division (A)” of R.C. 2151.421. R.C. 2151.421(A)(1)(a) states:

No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age, or a person under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as otherwise provided in this division or section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.

The provisions of R.C. 2151.421(A) apply, among other individuals, to schoolteachers, school employees, and other school authorities. R.C. 2151.421(A)(1)(b). Accordingly, R.C. 2151.421(A) requires schoolteachers, school employees, and other school authorities, including administrators, to report suspected cases of child abuse to child and family services when they have reasonable cause to believe that a child has suffered, or faces a threat of suffering, physical or mental injury.

{¶ 38} During discovery, both parties conducted numerous depositions. Among them was the deposition of former Norton Middle School Teacher Coventry Tinney. Tinney testified that she reported Rutan’s conduct to Davis on two separate occasions.

{¶ 39} Tinney first described an incident in which she overheard Rutan tell a middle school girl that “she looked really good” in the outfit she was wearing. (Dec. 9, 2024 Tr. Dep. of Tinney Coventry at 19.) Tinney reported the incident to Davis. Davis acknowledged during her own deposition that she neither investigated the incident nor reported it to child and family services.

{¶ 40} The next time Tinney reported Rutan’s inappropriate conduct to Davis was during the 2012 through 2013 school year, which happened to be M.S.’s eighth-grade year

and the same year when Rutan began his inappropriate relationship with M.S. Tinney testified that several female students confided in her while she was teaching an all-girls choir class. The students reported that Rutan behaved inappropriately in class, treated female students differently from male students by showing favoritism, and was “really inappropriate.” *Id.* at 21. They told Tinney that Rutan allowed certain female students to sit in preferred locations in his classroom, excused them from completing classwork, and made inappropriate comments about their appearance. According to Tinney, she was so sufficiently concerned by this that she “immediately” reported what the girls had told her to Davis. *Id.* Although Davis assured Tinney that she would speak with Rutan, Davis later testified that she never did so and never reported the information to child and family services pursuant to R.C. 2151.421.

{¶ 41} Additional evidence presented by M.S. in opposition to summary judgment, when viewed in the light most favorable to M.S., could support the conclusion that Davis either knew or, at minimum, had reason to suspect that Rutan’s conduct warranted investigation and/or reporting. M.S. testified that she frequently spent entire school days roaming the halls and empty classrooms of Norton Middle School with Rutan, even when she was supposed to be attending high school classes in another district. M.S. also testified that Davis was aware of how much time she spent with Rutan because Davis frequently stopped by Rutan’s classroom while M.S. was there and regularly stopped to talk to M.S. and Rutan when they were together in the hallways. M.S.’s friend, T.T., likewise testified that she found it remarkable that “no one cared” that Rutan and M.S. were so often alone together at the school after hours. (Apr. 14, 2025 Pl.’s Memo in Opp. to Def.’s Mot. for Summ. Jgmt. at 15.) M.S. also testified that while she was on the middle school track team, Rutan regularly sat beside her on the bus to and from track meets. On some of these occasions, the two shared a blanket, and Rutan touched her underneath it in the presence of her teammates.

{¶ 42} While Davis argues that she was never made aware of any inappropriate touching or grooming behavior, and that Rutan and M.S., for the most part, kept such conduct to themselves, with M.S. only revealing the truth of the relationship to her friend, T.T., who likewise kept it a secret, other evidence in the record supports a finding that rumors concerning M.S.’s relationship with Rutan—or, at a minimum, Rutan’s pattern of inappropriate conduct toward female students—were widespread and pervasive throughout the school. For instance, Tinney testified that she was not the only teacher who

had concerns about Rutan's behavior, and that other teachers often talked about Rutan's "inappropriate behaviors" with his female students. *Id.* at 4. M.S.'s testimony on this point corroborated that of Tinney's. M.S. testified that Rutan openly flirted with and complimented female students, routinely displayed favoritism toward them, and even drove female students to and from school, having them enter his car in plain view of others.

{¶ 43} M.S. further testified that there were "persistent and constant" rumors about her relationship with Rutan, and those rumors extended beyond students to parents, as well. *Id.* at 5. Indeed, in her opposition to summary judgment, M.S. presented the trial court with an email that had been sent by a parent to Rutan that discussed how that parent had heard that Rutan had been inappropriate with his female students.

{¶ 44} M.S.'s and Tinney's testimony further suggest that suspicions regarding M.S.'s relationship with Rutan were so pervasive that they persisted for years. As M.S. testified, once she reported the abuse in 2021 and Rutan was arrested and news of the arrest became public, former Norton Middle School students and teachers contacted her expressing that they believed M.S. had been the victim, even before her identity had been publicly disclosed. Additionally, during Tinney's deposition, a text message exchange with one of M.S.'s former classmates was introduced into evidence:

[Tinney:] We had suspicions and we spoke up, but the administration loved [Rutan] and we had no proof. It sucked. . . .

[Tinney:] [SWCSD is] really good at sweeping things under the rug. . . .

[Former Classmate:] Yes!! We told multiple administrators and they just pretended like it was gossip. He literally painted her chair gold and they said it's normal. . . .

(Tr. Dep. of Tinney Coventry, Ex. 3; Pl.'s Memo in Opp. to Def.'s Mot. for Summ. Jgmt., Ex. B.) When asked during her deposition if she felt like Rutan's conduct was an example of something swept under the rug, Tinney replied, "Yes." (Tr. Dep. of Tinney Coventry at 59.) Likewise, when she was asked whether she believed that other students and teachers had suspicions about Rutan and M.S., Tinney replied, "Yes." *Id.*

{¶ 45} Although Davis asserts that she was never made aware of and knew nothing about Rutan's inappropriate behaviors, the relevant question at the summary judgment phase is not what Davis asserts but, rather, whether the evidentiary record, viewed in the light most favorable to M.S.'s claims, establishes the absence of a genuine issue of material

fact on this point. If a jury could conclude that Davis was not truthful regarding her claimed lack of knowledge, or that she remained willfully blind or deliberately ignorant to Rutan's conduct toward M.S. and other female students, and that such conduct gave rise to a duty to report under R.C. 2151.421, then summary judgment in Davis's favor is not appropriate.

{¶ 46} Upon our independent review of the record, we agree with the trial court that genuine issues of material fact remain regarding the extent of Davis's knowledge of Rutan's conduct toward M.S. and other female students and, consequently, whether she had a statutory duty to report under R.C. 2151.421.

2. Additional Negligence and Intentional Infliction of Emotional Distress Claims

{¶ 47} Under R.C. 2744.03(A)(6)(b), civil liability is reinstated for employees of political subdivisions where "the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner[.]" Within this context, recklessness is defined as "the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Anderson*, 2012-Ohio-5711, at ¶ 34. Whereas "[w]anton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is great probability that harm will result." *Id.* at ¶ 33.

{¶ 48} Here, M.S. argues that Davis acted recklessly and/or wantonly in failing to investigate or report Rutan's behavior, or properly supervise him, thus causing M.S. continued injury and harm at the hands of Rutan. As she did in response to M.S.'s negligence per se claim, under R.C. 2151.421, Davis asserts that her acts or omissions in failing to investigate, report, or otherwise supervise Rutan's behavior cannot be deemed reckless or wanton when she did not know about the misbehavior in the first place. However, when viewing the evidence presented at summary judgment in the light most favorable to M.S., a jury could find that Davis knew about Rutan's behavior or willfully remained blind to it. If so, the jury could further find that her failure to investigate, report, or supervise Rutan amounted to reckless or wanton conduct. *See Ruth v. Jennings*, 136 Ohio App.3d 370, 375 (12th Dist. 1999), quoting *Brockman v. Bell*, 78 Ohio App.3d 508, 517 (1st Dist. 1992) ("Because the line between willful or reckless misconduct, wanton misconduct, and ordinary negligence can be a fine one, 'the issue . . . should be submitted to the jury for consideration in light of the surrounding circumstances when reasonable

minds might differ as to the import of the evidence.’ ”). Accordingly, summary judgment is not appropriate on M.S.’s remaining negligence and intentional tort claims.

{¶ 49} We therefore overrule Davis’s second assignment of error and affirm the trial court’s denial of Davis’s request for summary judgment.

B. South-Western School District’s Liability

{¶ 50} In the first assignment of error, SWCSD argues that it is immune from liability on M.S.’s negligence per se claim asserting failure to report under R.C. 2151.421 because R.C. 2151.421 does not expressly impose liability on political subdivisions but, rather, only on individuals. It also asserts that it is immune from liability on the remainder of M.S.’s negligence claims—negligent supervision, negligence, and negligent security—because no exception to immunity applies to those claims.

{¶ 51} Upon review of the applicable law, we conclude that SWCSD is not entitled to immunity on the negligence per se claim asserting failure to report under R.C. 2151.421. We agree, however, that SWCSD is entitled to immunity on the remaining negligence claims.

1. A Political Subdivision’s Duty Under R.C. 2151.421

{¶ 52} As noted above, R.C. 2151.421 imposes a mandatory reporting obligation on the individuals identified in the statute who suspect child abuse. The individuals listed in the statute as having a duty to report are those positioned to regularly encounter and interact with children, including doctors, teachers, and therapists, among others. Here, SWCSD argues that it is generally immune from liability on any tort claim for damages pursuant to R.C. 2744.02(A), unless one of the five exceptions to immunity found in R.C. 2744.02(B) should apply. Of these, SWCSD argues that there are only two possible exceptions that could potentially apply—those found in R.C. 2744.02(B)(2) and (5). R.C. 2744.02(B)(2) states in relevant part:

[P]olitical 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.

R.C. 2744.02(B)(5) states in relevant part:

[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.

{¶ 53} Regarding the exception to political subdivision immunity set forth in R.C. 2744.02(B)(2), SWCSD contends that an individual’s duty to report suspected child abuse, under R.C. 2151.421, does not constitute a “proprietary function” of the political subdivision. Accordingly, SWCSD argues that an employee’s negligent failure to report suspected abuse would not subject the political subdivision to liability. We agree.

{¶ 54} R.C. 2744 *et seq.* will, at times, distinguish between a governmental function of a political subdivision and a propriety function of a political subdivision. Under R.C. 2744.02(B)(2), political subdivisions can be held liable for an injury caused by the negligent performance of acts by their employees with respect to proprietary functions of political subdivisions. A “proprietary function” is defined by R.C. 2744.01(G)(1)(a) and (b) as follows:

“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.

{¶ 55} The mandatory duty to report suspected child abuse does not appear anywhere in the list of propriety functions included within R.C. 2744.01(G)(2). Accordingly, to meet the definition of a propriety function, mandatory reporting under R.C. 2151.421 would need to satisfy both R.C. 2744.01(G)(1)(a) and (b). We find that it does not satisfy R.C. 2744.01(G)(1)(a).

{¶ 56} To be a propriety function, the function cannot be one specified in division R.C. 2744.01(C)(2), which identifies certain governmental functions. *See* R.C. 2744.01(G)(1)(a). R.C. 2744.01(C)(2)(c) specifically identifies “[t]he provision of a system of public education” as a governmental function. This court has stated that the

governmental function of providing for a system of public education “extends to most school activities and administrative functions of the educational process, even if not directly comprising part of the classroom teaching process.” *Perkins v. Columbus Bd of Edn.*, 2014-Ohio-2783, ¶ 12 (10th Dist). Furthermore, in other similar contexts, courts have found that measures to ensure the safety and security of students while in school falls under the governmental function of providing for a system of public education. See *McCullough v. Youngstown City School Dist.*, 2019-Ohio-3965, ¶ 32 (7th Dist); see also *Craycraft v. Simmons*, 2011-Ohio-3273, ¶ 21 (2d Dist.) (“providing school security and related tasks cannot be separated from the provision of a system of public education”).

{¶ 57} Applying this case law, we find that a teacher’s or administrator’s duty to keep children safe by reporting suspected abuse, pursuant to the dictates of R.C. 2151.421, falls under the umbrella of the governmental function of providing for a system of public education and, thus, is not a proprietary function.

{¶ 58} Moving on to the exception to immunity set forth in R.C. 2744.02(B)(5), SWCSD argues that this exception does not apply because R.C. 2151.421 does not expressly impose civil liability on political subdivisions as required by R.C. 2744.02(B)(5). SWCSD notes that R.C. 2151.421(A)(1)(b) provides a list of who can be held liable for failing to report a reasonable suspicion of child abuse, but, according to the district, this section only applies to *individuals* and does not mention school boards or any other political subdivision. SWCSD argues that omitting political subdivisions from the reporting requirement makes sense because only individuals, and not entities like political subdivisions, have the ability to report suspected abuse.

{¶ 59} Although we agree that the list of individuals liable for failing to report under R.C. 2151.421 does not include school boards or other political subdivisions in general, the Supreme Court of Ohio has, nevertheless, determined that political subdivisions are liable on claims of negligence per se for failure to report child abuse under R.C. 2151.421. Specifically, in *Yates v. Mansfield Bd. of Edn.*, 2004-Ohio-2491, a case with similar facts to the present case involving a teacher’s sexual assault of a student, the Supreme Court held that political subdivision immunity was not applicable to the Mansfield Board of Education, where the school board and school administrators failed to report suspected abuse as required by R.C. 2151.421. The Supreme Court reached this decision by relying on its earlier decision in *Campbell v. Burton*, 92 Ohio St.3d 336 (2001), where it similarly held that a

school board is not entitled to political subdivision immunity where there has been a violation of R.C. 2151.421's reporting requirements by the school board or its employees.

{¶ 60} At this juncture, neither *Yates* nor *Campbell* have been overruled or revisited by the Supreme Court. Unless and until that occurs, these decisions remain good law and require our application. Accordingly, we find that SWCSD is not immune from liability on M.S.'s negligence per se claim for failure to report suspected child abuse under R.C. 2151.421.

2. Liability on Remaining Negligence Claims

{¶ 61} SWCSD further argues that it is immune from liability on M.S.'s claims for negligent supervision, negligence, and negligent security because none of the exceptions to immunity set forth in R.C. 2744.02(B) apply. Having determined above that measures taken to protect the safety and security of students are integral to the governmental function of operating a system of public education, and do not constitute a proprietary function, we agree that no applicable exception under R.C. 2744.02(B) removes SWCSD's immunity.

{¶ 62} Accordingly, we sustain SWCSD's first assignment of error in part and overrule it in part. SWCSD is not entitled to political subdivision immunity on M.S.'s negligence per se claim, but it is entitled to immunity on her remaining negligence claims.

V. CONCLUSION

{¶ 63} For the foregoing reasons, we sustain SWSD's first assignment of error in part and overrule it in part, and we overrule the second assignment of error maintained by Davis. As such, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court for further proceedings consistent with this decision.

*Judgment affirmed in part and reversed in part;
cause remanded.*

BOGGS, P.J., and LELAND, J., concur.
