

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

RICHARD LESKO, ET AL.

Appellees

v.

GREENE COUNTY, OHIO
BOARD OF COUNTY
COMMISSIONERS, ET AL.

Appellants

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C.A. No. 2026-CA-25

Trial Court Case No. 2024 CV 0879

(Civil Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is affirmed in part and reversed in part, and the matter is remanded for further proceedings consistent with the opinion.

Costs to be paid as follows: 50% by appellees and 50% by appellants.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

LEWIS, P.J., and TUCKER, J., concur.

OPINION
GREENE C.A. No. 2026-CA-25

DAWN M. FRICK, JEFFREY C. TURNER, and JUSTIN R. MARKS, Attorneys for Appellants
JOSEPH W. STADNICAR, Attorney for Appellees

HANSEMAN, J.

{¶ 1} The Greene County, Ohio, Board of County Commissioners (“the Board”) and Mark Chandler appeal from the Greene County Common Pleas Court’s judgment denying their motion for summary judgment on their claims to immunity under Revised Code Chapter 2744. The Board and Chandler assert they are immune from liability for the sewer water intrusion that occurred at the home of the plaintiffs-appellees, Richard Lesko and Linda Lesko. For the following reasons, we affirm the trial court’s judgment as to the Board, reverse the trial court’s judgment as to Chandler, and remand the matter for further proceedings consistent with this opinion.

I. Facts and Course of Proceedings

{¶ 2} This matter concerns the Leskos’ negligence action against the Board and Chandler for a sewer water intrusion into their home that occurred on October 7, 2023. Located at 1727 North Central Drive in Beavercreek, Ohio, the Leskos have owned the property since 1965. The home is connected to the sanitation district’s sewer main, and between 1965 and 2023, the Leskos did not have issues with the sewer main connected to their property.

{¶ 3} Greene County is a political subdivision, and Mark Chandler was the Director of Greene County Sanitary Engineering Department at the time of the Leskos’ sewer water intrusion. The sanitary engineering department operated and maintained the sewer system. As part of its operations, the department cleared sewer main obstructions, including tree

roots. If an area of its sewer main had a tree root obstruction, the department added the area to a list called the “root list.” When an area of the sewer main was on the “root list,” the department had a policy to inspect those sewer mains annually. One area on the root list was the span of sewer main between 1705 and 1726 North Central Avenue. 1726 North Central Avenue is across the street from the Leskos’ property.

{¶ 4} On September 28, 2020, sanitary engineering department employees inspected the sewer main spanning from 1705 and 1726 North Central Avenue and documented that no roots were discovered. Similar inspections did not occur in 2021, 2022, or 2023. This portion of the sewer main leaked water into the Leskos’ property on October 7, 2023. Upon the issue being reported, the department dispatched a crew to the area and used a vac truck to blow high pressure water through the sewer main to wash away any blockage.

{¶ 5} The following day, a crew followed up to determine the cause of the water intrusion into the Leskos’ home. The crew used a closed circuit television camera to look into the sewer main from a manhole near the Leskos’ property. The crew discovered tree roots at four different areas in the sewer that were located 51 to 109 feet from the manhole. The roots were cut out using a machine. The crew determined that the tree roots caused the water intrusion into the Leskos’ property.

{¶ 6} On November 7, 2024, the Leskos filed their complaint for negligence against the Board and Chandler. The defendants later moved for summary judgment, claiming immunity under Revised Code Chapter 2744. The trial court denied their motions for summary judgment on February 12, 2026. This appeal timely followed.

{¶ 7} The Board and Chandler raise three assignments of error. The Board and Chandler both assert that the trial court erred in denying their motion for summary judgment. The Board and Chandler claim that they are statutorily immune from suit pursuant to Revised

Code Chapter 2744. In addition, the Board claims that the Leskos' negligence claim fails as a matter of law because it did not have actual or constructive notice of a problem in the sewer main.

II. Discussion

Standard of Review

{¶ 8} “The issue of governmental immunity is a question of law.” *Coterel v. Reed*, 2016-Ohio-7411, ¶ 11 (2d Dist.), citing *Conley v. Shearer*, 64 Ohio St.3d 284, 292 (1992). “When presented with a question of law, we apply a de novo standard of review.” *Id.*, citing *Hayward v. Summa Health Sys./Akron City Hosp.*, 2014-Ohio-1913, ¶ 23. “Appellate courts also employ a de novo standard of review for reviewing summary judgment motions.” *Id.*, citing *Gilson v. Am. Inst. of Alternative Medicine*, 2016-Ohio-1324, ¶ 48 (10th Dist.). “In a de novo review, the trial court’s decision is not given deference by the reviewing appellate court; the same standard that the trial court should have used is applied, and we examine the evidence to determine whether as a matter of law no genuine issues of material fact exist for trial.” *Id.*, citing *Riverside v. State*, 2016-Ohio-2881, ¶ 21 (2d Dist.), citing *Dupler v. Mansfield Journal Co., Inc.*, 64 Ohio St.2d 116 (1980).

{¶ 9} The standard for summary judgment is well established. Pursuant to Civ.R. 56(C), “[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Summary judgment will be granted when “reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly

in the party's favor." *Id.* "The burden of showing that no genuine issue of material fact exists falls upon the party who files for summary judgment." *Byrd v. Smith*, 2006-Ohio-3455, ¶ 10, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 294 (1996).

{¶ 10} Once the movant has so demonstrated, "an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E). "[C]ourts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346 (1993), citing *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356 (1992). "[B]ecause summary judgment is a procedural device to terminate litigation, it must be awarded with caution. Doubts must be resolved in favor of the non-moving party." *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359 (1992), citing *Osborne v. Lyles*, 63 Ohio St.3d 326, 333 (1992).

A. Statutory Immunity for the Board

{¶ 11} A three-tier analysis is required when determining a political subdivision's immunity from liability. *Greene Cty. Agricultural Soc. V. Liming*, 89 Ohio St.3d 551, 556 (2000). The starting point is the general rule 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." R.C. 2744.02(A)(1). Therefore, in applying this first step, the Board is not liable. The parties do not dispute this.

{¶ 12} However, this immunity is not absolute, and the second tier of the analysis concerns whether any of the exceptions to immunity in R.C. 2744.02(B)(1) through (5) apply.

R.C. 2744.02(B)(2)

{¶ 13} Here, the exception in R.C. 2744.02(B)(2) applies. The statute provides: “Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political 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)(2).

{¶ 14} The Board does not dispute that, as stated in R.C. 2744.01(G)(2)(d), the “maintenance, destruction, operation, and upkeep of a sewer system” is a proprietary function of a political subdivision. The Ohio Supreme Court has elaborated that maintenance includes “routine maintenance, inspection, repair, removal of obstructions, or general repair of deterioration.” *Coleman v. Portage Cty. Engineer*, 2012-Ohio-3881, ¶ 30.

{¶ 15} The Board does, however, claim that the exception to liability in R.C. 2744.02(B)(2) does not apply because the Leskos cannot prove their negligence claim as a matter of law. In response, the Leskos argue that, under *Cotere/*, an analysis of the underlying negligence claim is not within the scope of this appeal. The Board counters that an analysis of negligence is required under the exception of immunity. Before we can address the Board’s arguments regarding the negligence claim, we must first determine the scope of this appeal and our jurisdiction.

Scope of Appeal – Jurisdiction

{¶ 16} “Ohio law provides that appellate courts have jurisdiction to review the final orders of inferior courts in their district.” *Reed Elsevier, Inc. v. Nunn*, 2015-Ohio-3914, ¶ 9 (2d Dist.), citing Ohio Const., art. IV, § 3(B)(2), and R.C. 2505.02. Therefore, if an order is not final and appealable, an appellate court does not have jurisdiction to review the order.

Id. Generally, the denial of a motion for summary judgment is not a final appealable order. *Hubbell v. City of Xenia*, 2007-Ohio-4839, ¶ 9.

{¶ 17} However, “[w]hen a trial court denies a motion in which a political subdivision or its employee seeks immunity under R.C. Chapter 2744, that order denies the benefit of an alleged immunity and is therefore a final, appealable order pursuant to R.C. 2744.02(C).” *Id.* at syllabus; R.C. 2744.02(C) (“[a]n order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.”).

{¶ 18} In *Cotere/*, we addressed the scope of review of an order that denied summary judgment on the issue of the political subdivision’s immunity. We repeated that “[w]e have held that, ‘an appeal from an order denying immunity is limited to the review of alleged errors in the portion of the trial court’s decision which denied the political subdivision the benefit of immunity.’” *Cotere/*, 2016-Ohio-7411, at ¶ 9 (2d Dist.), quoting *Vlcek v. Chodkowski*, 2015-Ohio-1943, ¶ 35 (2d Dist.), citing *Guenther v. Springfield Twp. Trustees*, 2012-Ohio-203, ¶ 24 (2d Dist.). We further stated:

The trial court’s order denying summary judgment on the merits of the claims for relief is not a final appealable order, those claims not having been reduced to judgment. The trial court order overruling summary judgment on any issue other than the immunity defense is not a final appealable order. Therefore, our decision is solely addressed to the immunity defenses, and is not concerned with the merits of the pending claims, or the other, non-immunity, defenses that remain pending in the trial court.

Id. at ¶ 8.

{¶ 19} The Board points out that our analysis in *Cotere/* concerned individual immunity under R.C. 2744.03(A)(6), not the immunity exception in R.C. 2744.02(B)(2). The Board argues that *Cotere/* is distinguishable and that we need to determine whether, as a matter of law, the Board had actual or constructive notice of the tree roots in the sewer main. The Board contends that we must analyze the underlying negligence claim.

{¶ 20} In our view, because summary judgment on the negligence claim was denied by the trial court, we do not have a final appealable order and an analysis of negligence, including the element of actual or constructive notice, is outside the scope of this appeal and our jurisdiction. *Cotere/* at ¶ 18; *Volny v. Portage Cty.*, 2022-Ohio-338, ¶ 57 (11th Dist.) (“whether the county had notice of Parkman Road’s allegedly dangerous condition is beyond the permitted scope of this appeal, which is limited to the issue of statutory immunity”); *Brown v. Cincinnati*, 2020-Ohio-5418, ¶ 7 (1st Dist.) (citing cases from the Fourth and Ninth District Courts of Appeals); *Johnson v. Greater Cleveland Regional Transit Auth.*, 2021-Ohio-938, ¶ 51 (8th Dist.) (whether the opposing party established a breach of duty in a negligence claim was not within the scope of appellate review of alleged political subdivision liability); *But see Luke v. Short Creek Joint Fire Dist.*, 2025-Ohio-203 (7th Dist.).

{¶ 21} In a similar case where a political subdivision claimed that it was entitled to summary judgment based on statutory immunity because it lacked notice of the defect underlying the plaintiff’s negligence claim, the Eleventh District Court of Appeals determined that the issue was not within the scope of the appeal and explained:

“The issue of whether negligence was proven is different than whether the immunity exception can apply” *Lakota* [v. *City of Ashtabula*, 2015-Ohio-3413, ¶ 29 (11th Dist.)]. “Immunity is a doctrine that provides a complete defense to a tort action. By asserting an immunity defense, the defendant does

not allege that there was no negligence. The defendant is asserting that it is protected from liability for negligence by reason of R.C. Chapter 2744.” *Rondy v. Richland Newhope Industries, Inc.*, 2016-Ohio-118, 57 N.E.3d 369, ¶ 27 (5th Dist.); *Nicholson v. LoanMax*, 2018-Ohio-375, 105 N.E.3d 489, ¶ 10 (7th Dist.). Therefore, whether the county had notice of Parkman Road’s allegedly dangerous condition is beyond the permitted scope of this appeal, which is limited to the issue of statutory immunity.

Volny at ¶ 57.

{¶ 22} Similarly, the First District Court of Appeals explained that appellate review of an order that denies a political subdivision immunity from liability “does not throw open the door to all interlocutory matters: appellate review under R.C. 2744.02(C) is limited to the denial of immunity.” *Brown* at ¶ 7, citing *Leasure v. Adena Local School Dist.*, 2012-Ohio-3071, ¶ 43 (4th Dist.), and *Bonkoski v. Lorain Cty.*, 2018-Ohio-2540, ¶ 12 (9th Dist.).

{¶ 23} Therefore, pursuant to our prior holding in *CotereI*, we do not have jurisdiction to evaluate the actual or constructive notice and duty elements in the Leskos’ underlying negligence claim in this appeal. It is outside the scope of our appellate review of the political subdivision immunity defense.

{¶ 24} However, even if we could address the issue, we agree with the trial court that there are genuine issues of material fact in dispute for trial. The Board placed the sewer main section of 1705 and 1726 North Central Avenue on its “root list.” We have stated that the elements of constructive notice include (1) “whether the defect could and should have been discovered,” (2) “the length of time that the defect has existed,” and (3) “whether the defect if discovered would have created a reasonable apprehension of danger.” *Hobson v. City of Dayton*, 1996 WL 531619, *3-4 (2d Dist. Sept. 20, 1996).

{¶ 25} We explained the first element “emphasizes the physical characteristics of the defect and the surrounding area. Factors such as the location, size, and nature of the defect as well as whether it was readily apparent or obscured should be visited in making this determination.” *Id.* at *3. The second element “requires enough time that the municipality, through the exercise of ordinary care, could and should have discovered the defect and had a reasonable amount of time to repair or guard against it.” *Id.* at *4. “The exact amount of time that is needed to charge the municipality with notice has never been defined; it is necessarily dependent upon the circumstances of the individual case.” *Id.* The third element “requires a consideration of whether the extent of the defect was concealed so that it would not invite inspection, or, alternatively, it requires a consideration of whether the defect could not have been revealed even upon a reasonable inspection.” *Id.*

{¶ 26} These elements are consistent with the Supreme Court of Ohio’s holding that “[w]here a municipal corporation uses and assumes the management and control of a sewer within the municipality, it is required to exercise reasonable diligence and care to keep the same in repair and free from conditions which will cause damage to private property.” *Doud v. City of Cincinnati*, 152 Ohio St. 132 (1949), paragraph two of the syllabus. The law is also consistent that “[w]hen a municipal corporation assumes the control and management of a storm sewer which has been constructed in a public street under its supervision, it is bound to use reasonable diligence and care to see that such storm sewer is not clogged with refuse, and is liable for negligence in the performance of such duty to a property owner injured thereby, after reasonable notice of the clogged condition of such sewer.” *City of Portsmouth v. Mitchell Mfg. Co.*, 113 Ohio St. 250 (1925), paragraph two of the syllabus.

{¶ 27} The inclusion of 1705 and 1726 North Central Avenue on the sanitary engineering department’s root list could lead a reasonable jury to conclude that the Board

had constructive notice of the tree root intrusions that were a problem in that section of the sewer main. The trial court appropriately construed the facts in favor of the non-moving party and properly denied summary judgment on the Leskos' negligence claim. In applying the second step of the political subdivision immunity analysis, we conclude that the Board may be liable on the Leskos' claim under the exception to immunity in R.C. 2744.02(B)(2). Therefore, we overrule the Board's first assignment of error as it relates to the denial of summary judgment on the underlying negligence claim.

R.C. 2744.03(A)(5)

{¶ 28} Turning to the third step in the analysis of whether the Board is immune from liability, the Board claims that its statutory immunity should be reinstated by R.C. 2744.03(A)(5). This section provides, "The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner." *Id.*

{¶ 29} We have explained that "the R.C. 2744.03(A)(5) defense extends to activities that involve weighing alternatives or making decisions involving a high degree of official judgment or discretion." *Bledsoe-Baker v. City of Trotwood*, 2019-Ohio-45, ¶ 43 (2d Dist.), citing *Essman v. Portsmouth*, 2010-Ohio-4837, ¶ 54 (4th Dist.), citing *Enghauser Mfg. Co. v. Eriksson Eng. Ltd.*, 6 Ohio St.3d 31 (1983), paragraph two of the syllabus. "Routine decisions that require little judgment or discretion and that, instead, portray inadvertence, inattention, or unobservance do not create a defense to liability." *Id.*, citing *Tadijanac v. Jefferson Twp. Bellville Fire Dept.*, 2014-Ohio-4332, ¶ 48 (5th Dist.), citing *Frenz v. Springvale Golf Course & Ballroom*, 2012-Ohio-3568 (8th Dist.).

{¶ 30} The Board argues that the frequency of its sewer main inspections for blockages was a discretionary decision because it encompassed its use of personnel, equipment, and funds. However, in our view, when, and how often, to inspect sewer mains is not a discretionary function that warrants the immunity grant of R.C. 2744.03(A)(5). *Malone v. Chillicothe*, 2006-Ohio-3268 (4th Dist.).

{¶ 31} In *Malone*, the city claimed immunity under R.C. 2744.03(A)(5) because its decision whether to fix deteriorating concrete in a sewer “required it to exercise a high degree of discretion in determining how to allocate financial resources and personnel.” *Id.* at ¶ 1. The Fourth District Court of Appeals disagreed, concluding that “the city’s decision regarding the sewer repair does not involve the creative exercise of political judgment that goes to the heart of government. Its decision regarding whether, when, and how to comply with its duty to maintain the sewer does not fall within the R.C. 2744.03(A)(5) exception.” *Id.* at ¶ 20.

{¶ 32} “[T]he discretionary defense does not insulate a political subdivision from liability for damages stemming from the negligent maintenance of its buildings or grounds.” *Id.* at ¶ 17, citing *Frederick v. Vinton Cty. Bd. of Edn.*, 2004-Ohio-550 (4th Dist.), and *Hall v. Ft. Frye Local School Dist. Bd. of Edn.*, 111 Ohio App.3d 690, 699-700 (4th Dist. 1996). “The maintenance of property does not involve the exercise of judgment or discretion.” *Id.*, citing *Hall* at 699-700. “‘The decision to allocate resources, i.e., “how to use equipment . . . or facilities,” has been made.’ The political subdivision then must properly maintain the equipment or facilities.” *Id.*, quoting *Hall* at 700.

{¶ 33} “In considering what a qualifying act of discretion under R.C. 2744.03(A)(5) looks like, we have said, ‘[i]f an *act of discretion* is merely a choice between alternate courses of conduct, then almost every volitional act or omission involves an exercise of discretion.’”

(Emphasis in original.) *Ezerski v. Mendenhall*, 2010-Ohio-1904, ¶ 10 (2d Dist.), quoting *Addis v. Howell*, 137 Ohio App.3d 54, 60 (2d Dist. 2000). “The defense, we said, ‘cannot be interpreted that broadly, for to do so would comprehend anything and everything a political subdivision might do.’” *Id.*, quoting *Addis* at 60. See *Hacker v. Cincinnati*, 130 Ohio App.3d 764, 770 (1st Dist. 1998) (“[A] political subdivision can not [sic] simply assert that all of its decisions are discretionary in order to obtain protection under R.C. 2744.03(A)(3) and (A)(5)”). “Rather, because ‘[the] defenses are in derogation of a general grant of immunity, they must be construed narrowly.’” *Id.*, quoting *Doe v. Dayton City School Dist. Bd. of Edn.*, 137 Ohio App.3d 166, 169 (2d Dist. 1999).

{¶ 34} For example, in *Bledsoe-Baker*, 2019-Ohio-45 (2d Dist.), we held that the decision to use a jet-vac to unclog a sewer blockage was not a discretionary function. In *Ezerski*, we held that the city’s decision not to replace a manhole cover that had been removed—which allowed debris to enter and obstruct the sewer line and cause a backup to private property—was not a discretionary function. The argument in *Ezerski* was similar to the Board’s argument in this case. The political subdivision claimed that its decision not to replace the manhole cover involved its exercise of discretion over whether it would acquire the materials needed to secure the manhole cover. *Ezerski* at ¶ 9. In explaining our disagreement, we quoted *Malone*’s statement that “‘a city cannot shirk its duty by claiming that the decision to properly maintain the sewers involved discretion in allocating limited financial resources and personnel.’” *Id.* at ¶ 11, quoting *Malone*, 2006-Ohio-3268, at ¶ 27 (4th Dist.).

{¶ 35} “[I]n order to demonstrate an exercise of discretion for which R.C. 2744.03(A)(5) confers immunity from liability,’ the defendant must show ‘[s]ome positive exercise of judgment that portrays a considered adoption of a particular course of

conduct in relation to an object to be achieved.” *Id.* at ¶ 10, quoting *Doe* at 169. The Board offers no evidence of such a particular exercise of judgment in this case. It simply failed to conduct annual inspections when it had a policy to annually inspect portions of the sewer main on the “root list.” Therefore, we conclude that reasonable minds cannot find the “positive exercise of judgment” needed to establish the defense described in R.C. 2744.03(A)(5). Thus, the Board is not entitled to summary judgment as a matter of law. We conclude that the trial court did not err in determining that genuine issues of material fact exist and that the Board was not entitled to summary judgment on its immunity defense.

B. Statutory Immunity for Chandler

{¶ 36} Chandler claims that he is entitled to statutory immunity as a matter of law as an employee of the Board. The trial court’s decision denying summary judgment regarding Chandler did not address the standards for a political subdivision employee’s immunity. The trial court’s decision instead implied that whether Chandler’s actions were negligent or wanton was a question for a jury to decide.

{¶ 37} Immunity for the employees of the political subdivision is separately addressed in R.C. 2744.03(A)(6) and does not involve the three-tier test. Generally, employees of a political subdivision are immune from civil liability. R.C. 2744.03(A)(6). However, if the “employee’s acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities” or if the “employee’s acts or omissions were [done] with malicious purpose, in bad faith, or in a wanton or reckless manner,” then the employee is not immune from liability. R.C. 2744.03(A)(6)(a) and (b).

{¶ 38} Revised Code Chapter 2744 does not define the phrase “manifestly outside the scope of the employee’s employment or official responsibilities.” But we have found the Ninth District’s interpretation of the phrase persuasive:

“Ohio courts have generally held that “conduct is within the scope of employment if it is initiated, in part, to further or promote the master’s business.”” *Curry v. Blanchester*, 12th Dist. Clinton Nos. CA2009-08-010, CA2009-08-012, 2010-Ohio-3368 [2010 WL 2807948], ¶ 30 (12th Dist.), quoting *Jackson v. McDonald*, 144 Ohio App.3d 301, 307, 760 N.E.2d 24 (5th Dist.2001). ‘For an act to fall within the scope of employment, it must be “calculated to facilitate or promote the business for which the [employee or agent] was employed.”’ *Johnson v. Godsey*, 2d Dist. Clark No., 2012 CA 80, 2013-Ohio-3277 [2013 WL 3936206], ¶ 32, quoting *Osborne v. Lyles*, 63 Ohio St.3d 326, 329, 587 N.E.2d 825 (1992). ‘In general, if an act is committed within the scope of employment, it will be authorized, either expressly or impliedly, by the employer.’ *Johnson* at ¶ 32. “It is only where the acts of state employees are motivated by actual malice or other [situations] giving rise to punitive damages that their conduct may be outside the scope of their state employment.”” *Curry* at ¶ 30, quoting *Jackson* at 307, 760 N.E.2d 24. ‘The act must be so divergent that it severs the employer-employee relationship.’ (Internal quotations and citations omitted.) *Wee Care Child Ctr., Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 13AP-1004, 2014-Ohio-2913 [2014 WL 2973285], ¶ 28. ‘One acts with a malicious purpose if one willfully and intentionally acts with a purpose to cause harm.’ *Moss v. Lorain Cty. Bd. of Mental Retardation*, 2009-Ohio-6931, ¶ 19 (9th Dist.).”

Coterel, 2016-Ohio-7411, at ¶ 17 (2d Dist.), quoting *Thomas v. Bauschlinger*, 2015-Ohio-281, ¶ 25 (9th Dist.).

{¶ 39} We recently defined the terms “malicious purpose,” “bad faith,” “wanton,” and “reckless manner.” The terms “describe different and distinct degrees of care and are not interchangeable.” *Anderson v. Massillon*, 2012-Ohio-5711, paragraph one of the syllabus. “They are sometimes described ‘as being on a continuum, i.e., willful conduct is more culpable than wanton, and wanton conduct is more culpable than reckless.’” *Strayer v. Barnett*, 2017-Ohio-5617, ¶ 38 (2d Dist.), quoting *Anderson* at ¶ 42 (Lanzinger, J., concurring in judgment in part and dissenting in part).

{¶ 40} “[M]alicious purpose’ means a willful and intentional design to injure.” *Wyatt v. Springfield*, 2024-Ohio-3334, ¶ 20 (2d Dist.), citing *Cotere/* at ¶ 16, quoting *Rondy v. Richland Newhope Indus., Inc.*, 2016-Ohio-118, ¶ 42 (5th Dist.). “Bad faith’ suggests a dishonest purpose and conscious wrongdoing with ulterior motives or ill will.” *Id.*

{¶ 41} “Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is a great probability that harm will result.” *Id.* at ¶ 12, quoting *Anderson* at ¶ 33. Reckless conduct “is characterized by 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.” *Id.* at ¶ 21, quoting *Anderson* at ¶ 34. “Recklessness requires a showing that the actor knew his or her conduct ‘in all probability’ would result in injury.” *Id.*, quoting *McDonald v. Lacy*, 2018-Ohio-2753, ¶ 26 (2d Dist.). “Even showing recklessness is a ‘rigorous’ threshold to meet.” *Id.*

{¶ 42} Chandler was the director of the sanitary engineering department. He was hired into the position three or four months before the October 2023 sewer water intrusion into the Leskos’ home. His duties were overall supervision of the department, including finance, billing, and operations.

{¶ 43} After the Leskos' property experienced the sewage water intrusion, Chandler wrote an email to the Greene County administrator describing the sewage backup as "unacceptable" and stating that the backup was "created by a lack of O&M [operation and maintenance] on our part." Chandler testified that the sewer main blockage was not an "unknowable event" and that if the department had followed its own annual sewer inspection program, the Leskos would not have had the sewer water intrusion.

{¶ 44} Chandler claims there is no evidence that he acted "manifestly outside the scope of his employment" or with "malicious purpose, in bad faith, or in a wanton or reckless manner." The Leskos argue that Chandler acted wantonly because of his lack of oversight of the department. At oral argument, the Leskos elaborated that Chandler failed to properly manage the department, appropriately direct resources to the department, and ensure the department's compliance with the annual inspection of sewer mains on the "root list."

{¶ 45} We see no genuine issue of material fact and conclude that Chandler is entitled to immunity as a matter of law. He did not act with "malicious purpose, in bad faith, or in a wanton or reckless manner." His actions were also not outside the scope of his employment. Chandler was new in his role as director and was possibly negligent, at most. Because "an employee is immune from liability for negligent acts or omissions," we hold that Chandler is immune from civil liability pursuant to R.C. 2744.03(A)(6). *Anderson*, 2012-Ohio-5711, at ¶ 23, We therefore sustain the third assignment of error.

III. Conclusion

{¶ 46} Having overruled the appellants' first and second assignments of error, the order denying summary judgment is affirmed as to the Board. Having sustained the third assignment of error, we reverse the portion of the trial court's judgment denying statutory immunity to Chandler. The matter is remanded to the trial court for further proceedings.

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LEWIS, P.J., and TUCKER, J., concur.