

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

STACY GRIMES, ET AL.,

Plaintiffs - Appellees

-vs-

CITY OF PIQUA, OHIO

Defendant - Appellant

Case No. 26 CAE 04 0029

Opinion and Judgment Entry

Appeal from the Delaware County Court of
Common Pleas, Case No. 25 CV G 09 1025

Judgment: Affirmed

Date of Judgment Entry: October 5, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: Jedidiah I. Bressman, David A. Bressman, Richard “Tre” P. Bogetich, Law Office of David A. Bressman, for Plaintiffs-Appellees; Dawn M. Frick, Christopher T. Herman, Bradley J. Dick, Surdyk, Dowd & Turner Co., L.P.A., for Defendant-Appellant.

Hoffman, P.J.

{¶1} Defendant-Appellant City of Piqua appeals the March 2, 2026 decision of the Delaware County Common Pleas Court denying its Civ. R. 12(C) motion for judgment on the pleadings as to Counts 1 (Negligence) and 7 (Strict Liability) of the Second Amended Complaint filed by Plaintiffs-Appellees Stacy Grimes, et al.

STATEMENT OF THE FACTS AND CASE

{¶2} This matter arises from injuries allegedly sustained as a result of fire training and suppression research conducted at a former water treatment plant owned by the City of Piqua, Ohio. The City of Piqua ("Piqua") is a municipality located in Miami County, Ohio.

In May 2017, Piqua decommissioned a water treatment plant located at 9300 S.R. 66 in Piqua, Ohio with the intent to convert the site into a regional emergency training center. Pursuant to those plans, Piqua partnered with private and public entities to utilize the site for training and research activities. The two private entities are Energy Storage Response Group ("ESRG") and Bensen Fire & Safety Consulting ("Bensen").

{¶3} Between January, 2018, and September, 2023, ESRG and Bensen conducted research on lithium-ion batteries, which at times involved burning batteries to attempt to learn effective techniques for suppressing battery fires. Throughout their research, permits and approvals were obtained from regulatory authorities, including the Ohio Environmental Protection Agency ("Ohio EPA") and Public Health of Dayton and Montgomery County's Regional Air Pollution Control Agency ("RAPCA").

{¶4} Between May and September 2023, regulatory authorities began receiving complaints regarding the fire training and research activities on the premises. According to Plaintiffs, "residents called 911 or complained to city officials about explosions, smoke, and unusual health symptoms." In response to these complaints, the Ohio EPA and RAPCA conducted a joint site inspection in September, 2023. Shortly thereafter, the Ohio EPA issued a report finding ESRG's activities exceeded the scope of the permissions granted by regulatory authorities. After the report was issued, Piqua suspended the training and research operations at the premises.

{¶5} On September 12, 2025, Plaintiffs-Appellees filed their initial Complaint in this matter, naming the City of Piqua, Ohio, Energy Safety Response Group, LLC, Bensen Fire

& Safety Consulting, Ltd., Public Health of Dayton & Montgomery County, along with John/Jane Doe Defendants and XYZ Corporation Defendants.^{1 2}

{¶6} The twenty-four Plaintiffs-Appellees (or sets of related Plaintiffs) are residents of Piqua and surrounding areas who were allegedly exposed to toxic emissions from burning operations on the premises. Plaintiffs-Appellees allege toxic emissions occurred between 2018, and 2023, from the deliberate burning of lithium-ion batteries at the former water treatment plant. Batteries disposed of in this facility allegedly were brought there from across North America, Asia, and Europe.

{¶7} Plaintiffs-Appellees further assert no ongoing air quality monitoring, or environmental impact analysis was done, even though the burning of the batteries exposed nearby communities to hazardous chemicals. Medical testing has allegedly confirmed the presence of heavy metals in residents' bloodstreams, and some residents report lingering symptoms of a respiratory, neurological and/or dermatological nature. The burning took place near the Great Miami River, giving rise to fears about the safety of public water supplies or other potentially far-reaching harms.

{¶8} On October 7, 2025, Plaintiffs-Appellees amended their Complaint, naming additional Plaintiffs.

{¶9} On October 14, 2025, Plaintiffs-Appellees sought leave to file a Second Amended Complaint, adding two additional Plaintiffs, which the trial court granted on October 23, 2025.

¹ The Public Health Agency for Dayton and Montgomery County was dismissed without prejudice in December, 2025.

² One defendant business is purportedly located in Delaware County justifying venue there.

{¶10} In their Second Amended Complaint, Plaintiffs-Appellees asserted ten causes of action, eight of which were against the City of Piqua, all arising out of tort theories of liability.

{¶11} On October 24, 2025, Piqua filed its Answer to Plaintiffs-Appellees' Second Amended Complaint, denying all claims and asserting various affirmative defenses, including statutory immunity.

{¶12} On December 23, 2025, Piqua filed a Civ. R.12(C) Motion for Judgment on the Pleadings. In its Motion, Piqua argued Ohio's Political Subdivision Tort Liability Act, R.C. Chapter 2744, provides the municipality with immunity from all of Plaintiffs' tort claims. Specifically, Piqua argued it was immune from the three intentional tort claims and the nuisance claims alleged in Plaintiffs-Appellees' Second Amended Complaint because Ohio law does not recognize such claims against political subdivisions. Piqua further argued it was immune from Plaintiffs' claims arising from negligence, gross negligence, and strict liability because it was engaged in a governmental function. Finally, Piqua argued Plaintiffs-Appellees "recklessness" claim failed as a matter of law, because no such separate and independent cause of action exists in Ohio.

{¶13} By Judgment Entry filed March 2, 2026, the trial court granted in part and denied in part Piqua's Motion for Judgment on the Pleadings, dismissing Plaintiffs-Appellees' intentional tort, nuisance, recklessness and gross negligence claims against Piqua as contained in Counts 2, 3, 4, 8, 9, and 10. The court denied Piqua's Motion with respect to Counts 1 and 7 of the Second Amended Complaint for negligence and strict liability, respectively, finding these claims were not ripe for a final decision on immunity. (Judgment Entry at 8).

{¶14} Defendant-Appellant City of Piqua now appeals the March 2, 2026, decision, assigning the following error for review:

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DENYING THE CITY OF PIQUA, OHIO'S ("PIQUA") MOTION FOR JUDGMENT ON THE PLEADINGS WITH RESPECT TO THE CLAIMS CONTAINED IN COUNTS 1 AND 7 OF THE PLAINTIFFS-APPELLEES' SECOND AMENDED COMPLAINT. PIQUA IS ENTITLED TO STATUTORY IMMUNITY PURSUANT TO RC. CHAPTER 2744 FROM ALL OF PLAINTIFFS-APPELLEES' CLAIMS, INCLUDING THOSE FOR NEGLIGENCE AND STRICT LIABILITY.

JURISDICTION

{¶15} Generally, a judgment overruling a motion for judgment on the pleadings is not a final appealable order. *Paul C. Harger Trust v. Morrow County Regional Planning Commission*, 2004-Ohio-6643, ¶ 24 (5th Dist.), citing *Kildow v. Home Town Improvements*, 2003-Ohio-733 (5th Dist.). "However, R.C. 2744.02(C) provides that an order denying a political subdivision or an employee of a political subdivision immunity from liability is a final order from which an appeal can be taken." *Harger Trust* at ¶ 24.

{¶16} Accordingly, we will proceed to the merits of the present appeal. *See, also, Rucker v. Village of Newburgh Hts.*, 8th Dist. Cuyahoga No. 89487, 2008-Ohio-910, ¶ 3 (holding a village's appeal of the denial of its 12(C) motion for judgment on the pleadings, which had

invoked R.C. Chapter 2744, was based on a final, appealable order pursuant to the Ohio Supreme Court's decision in *Hubbell v. City of Xenia*, 2007-Ohio-4839).

STANDARD OF REVIEW

{¶17} A motion for judgment on the pleadings is governed by Ohio Civ. R. 12(C), which provides: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

{¶18} Pursuant to Civ.R. 12(C), dismissal is only appropriate "where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 1996 Ohio 459. The very nature of a Civ.R. 12(C) motion is specifically designed for resolving solely questions of law. *See Peterson v. Teodosio*, 34 Ohio St.2d 161 (1973).

{¶19} Our appellate standard of review on a Civ.R. 12(C) motion is *de novo*. *Columbus v. Sanders*, 2012-Ohio-1514, ¶13 (5th Dist.). Under a *de novo* analysis, we must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Kramer v. Installations Unlimited*, 2002-Ohio-1844; *Schaad v. Buckeye Valley Local School Dist. Bd. of Edn.*, 2016-Ohio-569, ¶ 13 (5th Dist.).

THE POLITICAL SUBDIVISION TORT LIABILITY ACT, R.C. §2744.01

{¶20} We turn to the issue upon which this case rests: whether the City's conduct in leasing the subject property with full knowledge of the purpose of burning lithium-ion batteries and engaging in some firefighter training on the premises, constitutes a governmental or proprietary function. "Accordingly, if a [political] subdivision negligently causes damages

while engaging in a governmental function its immunity remains intact, but if it does so while engaging in a proprietary function its immunity falters." *State ex rel. Nix v. Bath Twp.*, 2011-Ohio-5636, ¶ 9 (9th Dist.), citing *Bauer v. Brunswick*, 2011-Ohio-4877, at ¶ 5.

{¶21} A "proprietary function" is a function that either (1) is specifically listed in R.C. §2744.01(G)(2), which lists examples of proprietary functions, or (2) is not described in R.C. §2744.01(C)(1)(a), (b), or (C)(2) and "promotes or preserves the public peace, health, safety, or welfare and * * * involves activities that are customarily engaged in by nongovernmental persons." R.C. §2744.01(G)(1). *Moore v. Lorain Metro. Housing Auth.*, 2009-Ohio-1250, ¶ 11.

{¶22} By contrast, R.C. §2744.01(C) provides two routes to determine whether a given function is governmental. First, the statute refers to the list in R.C. §2744.01(C)(2) of "specified" functions the General Assembly has expressly deemed governmental. In the alternative, a function is governmental if it meets one of three independent standards, enumerated in R.C. §2744.01(C)(1)(a) through (c). *Id.* at ¶ 12.

{¶23} The City of Piqua alleges it is entitled to judgment on the pleadings because it is immune from Plaintiffs-Appellees' tort claims set forth in their Complaint. Piqua argues its conduct with regard to leasing the property herein constitutes a governmental function as defined under R.C. 2744.01(C)(2).

{¶24} Pursuant to the Political Subdivision Tort Liability Act set forth in R.C. Ch. 2744, governmental entities, such as the City of Piqua, are "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).

{¶25} Under the provisions of R.C. § 2744.01(C)(2)(x), a governmental function includes "[a] function that the general assembly mandates a political subdivision to perform."

{¶26} 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).

{¶27} 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.

{¶28} R.C. § 2744.02(B)(2) states 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.

{¶29} The process of determining whether a political subdivision is immune from liability involves a three-tiered analysis. *Colbert v. City of Cleveland*, 2003-Ohio-3319, ¶ 7.

FIRST TIER

{¶30} "The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function." *Id.* at

¶ 7, citing *Greene Cty. Agricultural Soc. v. Liming*, 2000-Ohio-486; R.C. §2744.02(A)(1). This immunity, however, is not absolute. *Id.*, citing R.C. §2744.02(B).

{¶31} The parties agree the City of Piqua is a political subdivision and therefore entitled to the broad immunity provided by R.C. §2744.02(A)(1).

SECOND TIER

{¶32} "The second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. §2744.02(B) apply to expose the political subdivision to liability." *Id.* at ¶ 8.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) *** negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. ***

(2) *** negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) *** negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, ***.

(4) *** negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) *** when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. ***.

{¶33} R.C. §2744.02(B).

THIRD TIER

{¶34} If any of the exceptions to immunity in R.C. §2744.02(B) apply and no defense in that section protects the political subdivision from liability, then the third tier of the analysis requires a court to determine whether any of the defenses set forth in R.C. §2744.03 apply, thereby providing the political subdivision a defense against liability. *Colbert* at ¶9.

ANALYSIS

{¶35} Piqua argues the challenged conduct falls within the following functions expressly designated by the Ohio General Assembly as governmental:

(a) the provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) the power *** to prevent, mitigate, and clean up releases of oil and hazardous substances as defined in section 3750.01 of the Revised Code; and

(g) the construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function * * *.

{¶36} R.C. §2744.01(C)(2).

{¶37} Piqua further argues “even accepting Plaintiffs' factual allegations as true, it is clear that Piqua's use of the premises was intertwined with the provision of fire and rescue services.” (Defendant-Appellant’s brief at 10).

{¶38} In reviewing the Second Amended Complaint for purposes of R.C. §2744.02(B)(2), the trial court found:

Essential allegations assert that ESG and Bensen Fire "systematically burned thousands of pounds of toxic lithium-ion batteries *** exposing an entire community to hazardous chemicals including hydrogen fluoride, heavy metals, and other carcinogens, all while concealing the true nature of safety rules as matters of convenience, not command. (Complaint ¶¶ 2-3, p. 5). Allegedly, ESG was "the principal operator of the battery burning in Piqua." (¶ 3, p. 6). The private defendants operated using "leased space" from the City of Piqua (¶ 6, p. 6), so Piqua "profited from the industrial-scale battery burning operations conducted there." (¶2, p. 6).

In January 2018 the City of Piqua entered into an agreement with Bowling Green State University claiming the purpose was 'firefighter training and education'. (¶ 6, p. 7). The City argues that such use of the property demonstrates conclusively that it was engaged in a "governmental function" for immunity purposes. (Reply Memorandum, p. 4). Thereafter, all defendants allegedly "applied to the Ohio EPA for permission to conduct additional burns in Piqua, citing the need to train firefighters to extinguish electric vehicle fires." (Second Am. Complaint ¶ 8, p. 7) But "under the guise of firefighter training and research" defendants conducted "industrial-scale burning of batteries *** while failing to disclose the true scope, frequency or toxicity of the operation." (¶¶ 8-10, p. 7). Allegedly, such "operations took place under Ohio's 'open burn' regulations, which treated toxic lithium battery combustion as equivalent to brush or wood burning, despite well-documented risks and emissions." (¶ 13, p. 7). Further, "man burns" were allegedly unrelated to any documented firefighter training. "[O]ften no firefighter presence during burns" occurred. Significantly more burns occurred than were authorized under the EPA permit." (¶¶ 15-16, p. 7). All this continued for five years until September 2023, when Ohio EPA identified numerous regulatory violations and operations finally were suspended.

{¶39} (March 2, 2026, JE at 3-4).

{¶40} Based on the above findings, the trial court concluded:

... Given the present state of the record it is impossible to say with certainty whether activities on Piqua's property with respect to destruction of lithium-ion batteries, and alleged firefighter training - which was not genuine - qualifies as a proprietary function. At first glance this certainly seems like an unprecedented type of function for an Ohio political subdivision to undertake, particularly without any meaningful monitoring for air or water pollution affecting City residents and others.

R.C. 2744.01(G)(1) defines a "proprietary function." That part of the Act requires that any proprietary function of a political subdivision be "one that promotes or preserves the public peace, health, safety or welfare and involves activities that are customarily engaged in by nongovernmental persons." If plaintiffs' allegations are true, the City's longtime, unregulated, unmonitored and unfiltered permission given co-defendants to burn large quantities of lithium-ion batteries gathered from far outside Ohio arguably did not promote or preserve public health, safety or welfare in Piqua; it did quite the opposite. If the facts when developed show Piqua cannot meet the definition for a "proprietary function" then no legal defense or immunity would be available. While Piqua also argues it was engaged in a "governmental function" (Reply Memorandum, p. 4) that status too requires one to conclude that Piqua was engaged in an activity "that promotes or preserves the public peace, health, safety or welfare." R.C. 2744.01(C)(1)(c). The Second Amended Complaint tells no such tale.

... R.C. 2744.03(A)(5) provides that: "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." The Second Amended Complaint is replete with allegations that could be found to allege wanton or reckless misconduct by the City. "Reckless" conduct is defined for the purposes of this statute as "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." *Smathers v. Glass*, 172 Ohio St.3d 84, 2022-Ohio-4595, ¶ 33, quoting *Anderson v. City of Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, ¶ 34. "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.* quoting *OToole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, ¶ 33. Permitting the burning in open air of large quantities of lithium-ion batteries in a manner neither monitored nor legally permitted by Ohio EPA merely to earn unknown amounts of "rent" from private businesses using an old "facility" owned by Piqua could be found, at trial, to constitute reckless or wanton misconduct.

Similarly, R.C. 2744.02(B)(4) permits liability for negligence that occurs within or on the grounds of buildings used for a governmental function if there are "physical defects" present. This "physical defect" exception might be

applicable to Piqua in respect of plaintiffs' allegations that no air quality monitoring or other safety equipment was ever in use when lithium-ion batteries were burned. The term is not statutorily defined. However, a plurality decision by the Ohio Supreme Court has been recognized to have "found that 'the absence of a fire extinguisher or other safety equipment within a science classroom could be a physical defect such that an exception to immunity could exist under R.C. 2744.02(B)(4).'" *Howard v. City of Columbus, supra*, 32 citing *Doe v. Greenville City School Dist.*, 171 Ohio St.3d 763, 2022-Ohio-4618.

Claims in Counts 1 and 7 are not ripe for a final decision on immunity, and must proceed to the pretrial discovery stage. The City obviously has a right to again raise immunity by filing a motion for summary judgment once the factual record has been developed, but at this early stage the Civ. R. 12(C) motion of Piqua must be **DENIED** as to Counts 1 and 7.

{¶41} (March 2, 2026, JE at 6-8).

{¶42} The Ohio Supreme Court has held when the acts of a political subdivision go beyond governmental functions, and when it acts in a proprietary nature, there is little justification for affording immunity to that political subdivision. *Greene Cty. Agricultural Soc. v. Liming*, 2000-Ohio-486. "Having entered into activities ordinarily reserved to the field of private enterprise, a [political subdivision] should be held to the same responsibilities and liabilities as are private citizens." *Id.*, quoting *Schenkolewski v. Cleveland Metroparks Sys.*, 67

Ohio St.2d 31, 37 (1981). The *Liming* court quoted at length from its earlier case *Wooster v. Arbenz*, 116 Ohio St. 281, 284-285 (1927), stating:

In performing those duties which are imposed upon the state as obligations of sovereignty, such as protection from crime, or fires, or contagion, or preserving the peace and health of citizens and protecting their property, * * * the function is governmental, and if the municipality undertakes the performance of those functions, whether voluntarily or by legislative imposition, the municipality becomes an arm of sovereignty and a governmental agency and is entitled to * * * immunity * * *. If, on the other hand, there is no obligation on the part of the municipality to perform them, but it does in fact do so for the comfort and convenience of its citizens * * * and the city has an election whether to do or omit to do those acts, the function is private and proprietary.

Another familiar test is whether the act is for the common good of all the people of the state, or whether it relates to special corporate benefit or profit.

The *Wooster* court expounded that "if the function being exercised is proprietary and in pursuit of private and corporate duties, for the particular benefit of the [municipal] corporation and its inhabitants, as distinguished from those things in which the whole state has an interest, the city is liable." 116 Ohio St. at 284, 156 N.E. at 211.

{¶43} (Id. at 558-559).

{¶44} Moreover, "[i]n the absence of an explicit statutory definition, whether a function is governmental or proprietary must be determined by 'defining what it is that the political subdivision is actually doing when performing the function.'" *Kenko Corp. v. Cincinnati*, 2009-Ohio-4189, ¶ 27 (1st Dist.), quoting *Allied Erecting & Dismantling Co. v. Youngstown*, 2002-Ohio-5179, ¶ 23 (7th Dist.); *Srokowski v. Shay*, 2014-Ohio-3145, ¶ 16 (8th Dist.). It is not inconceivable, characterization of the activities conducted on the property leased by the City of Piqua to ESRG and Bensen, could, at times, be either governmental or proprietary, depending on the specific nature of the activity being conducted on any particular occasion.

{¶45} At this stage of the proceedings, our analysis, like that of the trial court, is limited to the facts alleged in the Second Amended Complaint. Construing all material allegations in the Complaint (along with all reasonable inferences that could be drawn therefrom) in favor of Plaintiffs-Appellees, we cannot state there is no set of facts which would preclude Plaintiffs-Appellees from proving an exception to immunity from liability on their negligence and strict liability claims against the City of Piqua or that a defense to liability would necessarily apply to reinstate immunity if the Plaintiffs-Appellees are successful in establishing an exception to immunity under R.C. §2744.02(B).

{¶46} Pursuant to Civ.R. 12(C), considering the four corners of Plaintiffs-Appellees' Second Amended Complaint and the allegations therein in a light most favorable to Plaintiffs-Appellees, we find the Second Amended Complaint sufficiently sets forth factual allegations, which we assume to be true at this stage of the proceedings, describing negligent and reckless conduct falling within the purview of Ohio law. Granting dismissal of these claims based on the affirmative defense of political subdivision immunity is premature.

In Ohio, a notice-pleading state, the plaintiff need not prove his or her case at the pleading stage. * * * Thus, a plaintiff need not affirmatively dispose of the immunity question altogether at the pleading stage. * * * Requiring a plaintiff to affirmatively demonstrate an exception to immunity at this stage would be tantamount to requiring the plaintiff to overcome a motion for summary judgment at the pleading stage. * * * Instead, a plaintiff must merely allege a set of facts that, if proven, would plausibly allow for recovery. (Citations omitted.) *Scott v. Columbus Dept. of Pub. Utils.*, 2011-Ohio-677, ¶ 8 (10th Dist.).

{¶47} *Windsor Realty & Mgmt., Inc. v. Northeast Ohio Reg'l Sewer Dist.*, 2016-Ohio-4865, ¶ 37 (8th Dist.).

{¶48} Thus, at this early stage in the proceedings, Plaintiffs-Appellees were not required to prove the applicability of an exception to immunity or to disprove the applicability of a claimed defense to an exception to immunity to avoid the dismissal of their Second Amended Complaint. When a political subdivision seeks dismissal on the pleadings based on R.C. Chapter 2744, it "must show that the complaint includes allegations that obviously or conclusively establish its entitlement to immunity." *5812 Invest. Group, L.L.C. v. Columbus*, 2024-Ohio-5930, ¶ 31 (10th Dist.).

{¶49} We agree with the trial court the City of Piqua has failed to obviously or conclusively establish its entitlement to immunity at this stage of the proceedings.

{¶50} For the reasons set forth above, the City of Piqua's assignment of error is overruled.

{¶51} The judgment of the Delaware County Court of Common Pleas is affirmed.

{¶52} Costs to Appellant.

By: Hoffman, P.J.

Montgomery, J. and

Popham, J. concur.