[Cite as *Conway v. Muskingum Cty. Bd. of Commrs.*, 2026-Ohio-4458.]

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

RANDALL W. CONWAY and DANIELLE N. CONWAY Plaintiffs - Appellants -vs- MUSKINGUM COUNTY BOARD OF COMMISSIONERS, as the governing body for MUSKINGUM COUNTY ADULT AND CHILD PROTECTIVE SERVICES Defendants - Appellees	Case No. CT2026-0051 Opinion and Judgment Entry Appeal from the Muskingum County Court of Common Pleas, Case No. CH2025-0327 Judgment: Affirmed Date of Judgment Entry: November 9, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: Randall W. & Danielle N. Conway, Pro se, for Plaintiffs-Appellants; J. Stephen Teetor, Matthew S. Teetor, Sarah A. Lodge, Teetor | Westfall, for Defendants-Appellees.

Hoffman, P.J.

{¶1} Plaintiffs-appellants Randall W. Conway and Danielle N. Conway appeal the April 27, 2026 Decision and Judgment Entry entered by the Muskingum County Court of Common Pleas, which granted judgment on the pleadings in favor of defendant-appellee Muskingum County Board of Commissioners ("the Board"), as the governing body for

Muskingum County Adult and Child Protective Services ("MCACPS" or "the Agency") and dismissed Appellants' complaint with prejudice.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellants, who are residents of the State of Michigan, became licensed foster parents in December 2024. On March 11, 2025, Appellant submitted an inquiry about a 6-year-old child ("the Child"), who was in the legal custody of MCACPS. Lynsey Yarger, an adoption coordinator with the Agency, contacted Appellants with information about the Child the following day. After receiving the information, Appellants decided to become foster parents for and engage in a "pre-adoptive placement" of the Child by agreement with MCACPS.

{¶3} Appellants' first direct interaction with the Child occurred on April 19, 2024. Over the ensuing five weeks, Appellants visited with the Child both in Ohio and Michigan on six separate occasions. These visits lasted multiple days and included overnights. On May 29, 2025, Appellants brought the Child to their home with the intention of having him stay with them under the foster care setting and "pre-adoptive placement."

{¶4} On June 15, 2025, Appellant Danielle Conway sent an email to MCACPS workers with the subject line: "*URGENT* [redacted] – Critical Safety Issues and Behavioral Escalation." Complaint, Exhibit A, p. 17. The email detailed the Child's increasingly concerning behaviors and requested "immediate guidance on next steps." *Id.*, Exh. A, p. 18. On June 17, 2025, Appellant Randall Conway sent an email to MCACPS workers advising Appellants had taken the Child to the University of Michigan Psychiatric Emergency Room due to escalating psychiatric concerns, including animal cruelty and homicidal ideations. *Id.*, Exh. A., p. 20. The email also demanded the Agency resolve an ongoing issue with obtaining

Medicaid coverage for the Child in Michigan. *Id*. Later that day, Appellants brought the Child back to Muskingum County, Ohio. The Child was returned to his original foster placement.

{¶5} On August 21, 2025, Appellants filed a complaint against MCACPS, alleging fraudulent inducement, negligence, violations of Ohio Admin. Code 5101:2-48-15 and 5180:2-42-90. MCACPS filed an answer on September 19, 2025. Therein, MCACPS asserted, as an affirmative defense, Appellants' claims were barred by immunity. On September 23, 2025, Appellants filed an amended complaint, alleging fraudulent inducement and seeking declaratory judgment. The amended complaint also added the Board as a defendant as the Board was the proper legal entity for purposes of oversight of Muskingum County agencies. On October 1, 2025, the Board filed an answer to the amended complaint, and asserted, as an affirmative defense, Appellants' claims were barred by immunity.

{¶6} On March 6, 2026, the Board filed a motion for judgment on the pleadings. The Board argued it was entitled to judgment on the pleadings as no private right of action existed under the Ohio Administrative Code provisions Appellants invoked; political subdivision immunity barred Appellants' claims; Appellants failed to plead the essential elements of fraudulent inducement; and Appellants' declaratory judgment claim was improper as Appellants sought a declaration of past liability. On March 23, 2026, Appellants filed a memorandum in opposition to the Board's motion.

{¶7} Via Decision and Judgment Entry filed April 27, 2026, the trial court granted the Board's motion for judgment on the pleadings and dismissed Appellants' amended complaint with prejudice. The trial court found the Board was immune from liability. The trial court further found, even if the Board was not immune from liability, no private right of

action existed under the Ohio Administrative Code provisions Appellants invoked; Appellants' complaint failed to state a cause of action for fraudulent inducement; and Appellants' declaratory judgment claim based upon alleged violations of Ohio Administrative Code provisions was improper.

{¶8} It is from this judgment entry Appellants appeal, raising the following assignments of error:

I. R.C. CHAPTER 2744 DOES NOT BAR PLAINTIFFS' *BURR* FRAUD CLAIM.

II. RELIANCE COULD NOT BE RESOLVED AGAINST PLAINTIFFS ON A CIV. R. 12(C) MOTION.

III. THE PLEADINGS ALLEGE EACH *BURR* FRAUD ELEMENT.

IV. OAC PROVISIONS ARE RELEVANT TO PLAINTIFFS' CLAIMS.

V. DISMISSAL WITH PREJUDICE WAS IMPROPER WITHOUT A FUTILITY DETERMINATION.

Standard of Review

{¶9} We review a trial court's decision to grant judgment on the pleadings de novo. *Euvrard v. The Christ Hosp.*, 141 Ohio App.3d 572, 575 (1st Dist. 2001).

{¶10} Civ.R. 12(C) allows any party to move for judgment on the pleadings after the pleadings are closed. A motion for judgment on the pleadings tests the sufficiency of a complaint and is restricted solely to the allegations in the pleadings. *Whaley v. Franklin Cty.*

Bd. of Commrs., 92 Ohio St.3d 574, 581 (2001), quoting *Peterson v. Teodosio*, 34 Ohio St.2d 161, 166 (1973). The "pleadings" consist of the complaint, the answer, and any attached written instruments. Civ.R. 7(A); Civ.R. 10(C). Written instruments are "documents that evidence the parties' rights and obligations, such as negotiable instruments, 'insurance policies, leases, deeds, promissory notes, and contracts.'" *State ex rel. Leneghan v. Husted*, 2018-Ohio-3361, ¶ 17, quoting *Inskeep v. Burton*, 2008-Ohio-1982, ¶ 17 (2nd Dist.).

{¶11} A court is permitted to consider both the complaint and the answer as well as any material incorporated by reference or attached as exhibits to those pleadings when ruling on a motion for judgment on the pleadings. *Orwell Nat. Gas Co. v. Fredon Corp.*, 2015-Ohio-1212, ¶ 18 (11th Dist.). In so doing, the court must construe the material allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. *Id.* "[W]hile we construe all of the allegations as true in the complaint, and we may *consider* the responses and affirmative defenses raised in the answer, those are not entitled to any inferences." (Emphasis in original.) *Ganzhorn v. R & T Fence Co.*, 2011-Ohio-6851, ¶ 13 (11th Dist.). "In order to be entitled to a dismissal under Civ.R. 12(C), it must appear beyond doubt that [the nonmovant] can prove no set of facts warranting the requested relief, after construing all material factual allegations in the complaint and all reasonable inferences therefrom in [the nonmovant's] favor." (Citation omitted.) *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 74 (2002).

I

{¶12} In their first assignment of error, Appellants maintain R.C. Chapter 2744 does not bar their fraud claim predicated on *Burr v. Board of County Commissioners of Stark County*, 23 Ohio St.3d 69 (1986). We disagree.

{¶13} Political subdivisions and their employees are generally immune from liability for acts related to governmental and proprietary functions. R.C. 2744.02(A)(1). R.C. 2744.02(A)(1) provides, in pertinent part:

> For purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons 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.
>
> (Emphasis added.) *Id.*

{¶14} The operation of a job and family services department or agency is a governmental function. *Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 2008-Ohio-2567, ¶ 16. As such, the Board is entitled to the broad grant of immunity provided by R.C. 2744.02(A)(1).

{¶15} A political subdivision may, however, be held liable if one of the five exceptions set forth in R.C. 2744.02(B) applies. R.C. 2744.02(B)(2) establishes liability of political subdivisions for injuries caused by negligent acts performed by employees with respect to proprietary functions. However, there is no such general exception for governmental functions. "Consequently, except as specifically provided in R.C. 2744.02(B)(1), (3), (4) and (5), with respect to governmental functions, political subdivisions retain their cloak of

immunity from lawsuits stemming from employees' negligent or reckless acts." (Citation omitted.) *Wilson v. Stark County Department of Human Services*, 70 Ohio St.3d 450, 452. "To overcome this general grant of immunity, a plaintiff must show that one of the exceptions in R.C. 2744.02(B) applies." *Frederico v. 1795 Spino Dr., LLC*, 2026-Ohio-1380, ¶ 9 (8th Dist.).

{¶16} Appellants not only failed to demonstrate any of the statutory exceptions set forth in R.C. 2744.02(B)(1)-(4) apply, but also did not assert any of the statutory exceptions to immunity apply. Rather, Appellants simply argue immunity does not apply to their fraudulent inducement claim. Appellants rely on *Burr v. Board of County Commissioners of Stark County*, 23 Ohio St.3d 69 (1986), in support of their assertion "the Ohio Supreme Court [has] recognized a cause of action against a political subdivision for fraud in the child-placement context" and applied "the settled elements of common-law fraud." Brief of Appellants at p. 8. We find Appellants' reliance on *Burr* to be misplaced. We adhere to our decision in *Eischen v. Stark County Board of Commissioners*, 2002 Ohio 7005, (5th Dist.), and find *Burr* "inapplicable because it is a pre R.C. 2744.01 et. Sq. case." Id. at ¶ 17.

{¶17} Appellants' first assignment of error is overruled.

II, III, IV

{¶18} Having found the Board is immune from liability under R.C. Chapter 2744, we find Appellants' second, third, and fourth assignments of error to be moot.

{¶19} Appellants' second, third, and fourth assignments of error are overruled.

V

{¶20} At Oral Arguments in this matter, Appellant Randall Conway conceded, if this Court found immunity applied, Appellants' fifth assignment of error would be moot.

{¶21} Appellants' fifth assignment of error is overruled.

{¶22} The judgment of the Muskingum County Court of Common Pleas is affirmed.

{¶23} Costs to Appellants.

By: Hoffman, P.J.

Baldwin, J. and

Montgomery, J. concur.