

Ohio Supreme Court Expands Exception to Political Subdivision Immunity

ATTORNEYS

Holly Marie Wilson
216.430.2238
hwilson@reminger.com

Brianna Prislipsky
216.430.2187
bprislipsky@reminger.com

Patrick Kasson
614.232.2418
pkasson@reminger.com

Danielle Lorenz
513.455.4019
dlorenz@reminger.com

Taylor Knight
419.609.4237
tknight@reminger.com

Andrew Jamison
330.434.6009
ajamison@reminger.com

Robert S. Yallech
330.744.1311
ryallech@reminger.com

PRACTICE AREAS

Education Law Liability

Jan 5, 2023

Ohio school districts and their employees are generally immune to most common law tort claims unless one of five enumerated exceptions to immunity applies. Traditionally, Ohio courts have narrowly applied these exceptions in favor of immunity. Recently, however, in a split 4-3 decision, the Supreme Court of Ohio, in *Doe v. Greenville City Schools*, Slip Opinion No. 2022-Ohio-4618, permitted a lawsuit to proceed against a school district by two students injured in a classroom accident. Though the school district asserted political subdivision immunity under Ohio Revised Code 2744.02, the Court found that immunity was not applicable due to an exception limiting immunity in cases where injury arises out of “physical defects” on property used to perform governmental functions.

In December 2019, two students at Greenville City Schools were injured when a bottle of isopropyl alcohol caught fire and exploded in a science class. The students sued the school, alleging that it failed to implement proper safety procedures or provide safety equipment, such as fire extinguishers in the classroom.

The school filed a motion to dismiss based upon statutory immunity under R.C. 2744, which generally precludes claims against a political subdivision, save for specifically enumerated exceptions to liability. In response to the school’s motion to dismiss, the students argued that the school’s immunity was subject to such an exception, which applies to injuries sustained due to physical defects within or on the grounds of a building used for a government function. The students claimed that the school’s lack of proper safety equipment constituted a “physical defect,” such that the exception to immunity would apply.

Ultimately, the case made its way to the Supreme Court of Ohio, where the school argued that a lack of safety equipment could not constitute a physical defect under Ohio law, as the equipment is not a “fixture” or part of the real estate.

In finding that the absence of safety equipment constituted a “physical defect” as contemplated by R.C. 2744.02, the Court recognized prior opinions which had held that other types of defective equipment, such as dilapidated safety

nets, loose bolts in sporting equipment, and unstable bleachers, could be considered physical defects. It then expanded that rationale to the absence of arguably necessary safety equipment. Consequently, the school's motion to dismiss was unsuccessful, and the case was remanded to the trial court for further proceedings.

In future cases, school districts seeking immunity under R.C. 2744.02 will need to evaluate whether the claims against them could properly be construed as arising out of a physical property defect, given the broad reading used by the Supreme Court in *Doe*. In doing so, parties should be cognizant that the term "defect" may be applied to faulty and improperly maintained equipment and the absence of equipment.

If you have any further questions regarding the impact of this opinion, or any other issue of Governmental or Public Entity Liability, please contact an attorney from Reminger's Educational Law Liability Practice Group.