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On April 7, 2011, the Supreme Court of Ohio, in a 7-0 decision, held that “in a civil action brought by an employee of a political subdivision arising out of the employment relationship, R.C. 2744.09 (B) removes immunity only as to the political subdivision and does not affect the statutory immunity of the fellow employee.” *Zumwalde v. Madeira & Indian Hill Joint Fire Dist.*, Slip Op. No. 2011-Ohio-1603, ¶127.

The case of *Zumwalde v. Madeira & Indian Hill Joint Fire Dist.*, involved a lawsuit filed by an employee of Madeira & Indian Hill Joint Fire District (hereinafter “the District”) and a supervisor who suspended her for violation of provisions of the District’s personnel guide. The trial court denied the supervisor’s motion for summary judgment which had sought dismissal of the case based, in part, on the assertion that he was immune from civil liability under R.C. 2744.09. The supervisor appealed to the First District Court of Appeals, which affirmed. The First District Court of Appeals held that the exception set forth in “R.C. 2744.09(B) removes immunity from political-subdivision employees in civil actions filed against them by another employee of the political subdivision in regard to any matter arising out of the employment relationship between the employee filing the suit and the political subdivision.” *Id.* at ¶18.

Reversing the First District Court’s decision, the Supreme Court held that R.C. 2744.09(B) precludes a political subdivision from asserting sovereign immunity as a defense against an employee-related claim, but does not affect the statutory immunity of another employee of the subdivision against such claims. The Supreme Court reasoned that the statutory language was “clear and unambiguous on its face and required no further interpretation.” *Id.* at ¶24. The Court noted “had the General Assembly intended also to remove immunity from the employees of political subdivisions, it could have easily done so by including the word “employee” in R.C. 2744.09(B), as it did in R.C. 2744.09(A).” *Id.* The Court therefore refused to interject its own interpretation of the statute by inserting or deleting words.

Accordingly, the Supreme Court reversed the First District Court’s judgment that the supervisor was not entitled to immunity pursuant to R.C. 2744.09(B) and remanded the case for further proceedings.

The full opinion can be accessed at: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2011/2011-ohio-1603.pdf> .

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