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Gallagher Sharp Newsflash: Political Subdivision Immunity

On December 6, 2012, in *Anderson v. Massillon*, Slip Opinion No. 2012-Ohio-5711, the Supreme Court of Ohio held that, in determining whether an exception exists for the immunity generally afforded to political subdivisions and their employees for injuries caused by the operation of a fire-department vehicle responding to an emergency, the standards of “willful,” “wanton,” and “reckless” are “different and distinct degrees of care and are not interchangeable.” Also, the Court ruled that the violation of a statute, ordinance, or departmental policy enacted for the safety of the public is not per se willful, wanton, or reckless conduct but may be relevant to determining the culpability of an employee’s course of conduct.

In *Anderson*, a wrongful-death complaint was filed against the city of Massillon and two of its firefighters, Susan Toles and Richard Annen. The Massillon fire engine operated by Toles and commanded by Annen was traveling in excess of the posted speed limit on a narrow residential street while responding to a 911 call regarding a car fire. At an intersection with a partially obstructed view of approaching vehicles on the cross-streets due to the homes, overgrown vegetation, a tree and a utility pole, the Massillon fire engine entered the intersection and a collision occurred between the fire engine and a vehicle driven by plaintiff’s husband, Ronald E. Anderson. As a result, the plaintiff’s husband and Javarre J. Tate, her grandson, died. The trial court granted the defendants summary judgment based on the finding that the city had a full defense to liability pursuant to R.C. 2744.02(B)(1)(b), because the fire engine was responding to an emergency call and the operation of the fire truck did not constitute willful or wanton misconduct. The trial court further concluded that the two firefighters were entitled to immunity pursuant to R.C. 2744.03(A)(6)(b), because plaintiff failed to present any evidence that the firefighters had acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

The Fifth District Court of Appeals reversed the trial court’s summary judgment. The court of appeals opinion was based upon the holding that “[t]he ‘wanton or reckless misconduct’ standard set forth in R.C. 2744.03(A)(6) and [the] ‘willful or wanton misconduct’ standard set forth in R.C. 2744.02(B)(1)[b] are functionally equivalent.” The appellate court found that genuine issues of material fact existed as to whether the operation of the fire engine was reckless, and thus summary judgment was not appropriate.

In affirming the court of appeals reversal of summary judgment, albeit on slightly modified grounds, the Supreme Court held that the legal standards for willful, wanton, and reckless conduct describe different and distinct degrees of care and are not interchangeable. In differentiating between the standards, the Supreme Court clarified that willful misconduct implies an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury. Further, 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 great probability that harm will result. Finally, reckless conduct is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another

which is unreasonable under the circumstances and substantially greater than negligent conduct. In deciding whether the immunity or a defense to liability exists for conduct that occurs during the operation of a fire-department vehicle while engaged at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm, the Court made clear that a violation of a statute, ordinance, or departmental policy enacted for the safety of the public is not per se willful, wanton, or reckless conduct but may be relevant to determining whether the culpability of a course of conduct amounts to willful, wanton, or reckless misconduct.

The *Anderson* case was remanded to the trial court for further proceedings consistent with the Supreme Court's opinion and application by the trial court of the clarified distinction between standards for willful, wanton, and reckless conduct. A companion case, *Burlingame v. Estate of Burlingame*, Slip Opinion No. 2012-Ohio-5698, another wrongful-death case arising out of an accident at an intersection between the decedent's vehicle and a Canton City fire truck, was also remanded by the Supreme Court to the court of appeals for further proceedings consistent with the Court's opinion in *Anderson*.

A copy of the full opinion in *Anderson v. Massillon* can be found at:

<http://www.supremecourtofohio.gov/rod/docs/pdf/0/2012/2012-ohio-5711.pdf>

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