

OHIO COURT OF APPEALS, TENTH APPELLATE DISTRICT

Douglas v. Columbus City Schools Bd. of Edn.

2020-Ohio-1133 (Ohio Ct. App. 2020) · No. 18AP-940 · Decided March 26, 2020

SUMMARY

The Ohio Tenth District Court of Appeals reviewed the grant of summary judgment to a school board, school district, and teacher after a student was injured by a rocket launched during a science class project. The court upheld political-subdivision and employee immunity under R.C. Chapter 2744, concluding that the physical-defect exception did not apply and that immunity was alternatively restored under R.C. 2744.03(A)(5).

CASE DETAILS

COURT	Ohio Court of Appeals, Tenth Appellate District
WRITING FOR THE COURT	Brown, J.; Dorrian, J.; Luper Schuster, J.
JURISDICTION	Ohio
DECIDED	March 26, 2020
DOCKET	18AP-940
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the Franklin County Court of Common Pleas' grant of summary judgment to the school board, school district, and teacher and denial of plaintiff's motion for summary judgment based on strict liability and res ipsa loquitur.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Whether a political subdivision or employee may invoke statutory immunity under R.C. Chapter 2744 generally presents a question of law.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential value under the court's publication status.
PARTIES	Liezl Douglas v. Columbus City Schools Board of Education, Columbus City School District, Kirk Bardos

TOPICS

[summary judgment](#)[municipal liability](#)[negligence](#)[standard of review](#)[appellate procedure](#)

PRACTICE AREAS

torts

political subdivision immunity

summary judgment

education law

QUESTIONS PRESENTED

1. Whether genuine issues of material fact precluded summary judgment for the school board, school district, and teacher.
2. Whether the physical-defect exception to political-subdivision immunity under R.C. 2744.02(B)(4) applied to the rocket or the circumstances of the rocket launch.
3. Whether the school board's immunity was restored under R.C. 2744.03(A)(5) because the alleged injury resulted from discretionary decisions concerning the use of equipment, materials, and supervision.
4. Whether Kirk Bardos was immune under R.C. 2744.03(A)(6).
5. Whether Douglas was entitled to summary judgment based on strict liability or *res ipsa loquitur*.

HOLDINGS

1. The rocket and the alleged manner of conducting and supervising the rocket launch did not constitute a physical defect within or on the grounds or buildings of a political subdivision under R.C. 2744.02(B)(4). None of the statutory immunity exceptions applied to the school board.
2. Even if the physical-defect exception had removed the school board's immunity, immunity would have been restored under R.C. 2744.03(A)(5) because the alleged injury resulted from discretionary decisions regarding the use of equipment, supplies, materials, and supervision, and there was no allegation or evidence of malicious purpose, bad faith, wanton conduct, or reckless conduct.
3. Bardos was immune under R.C. 2744.03(A)(6) because his acts occurred within the course and scope of his employment and there was no allegation or evidence that he acted with malicious purpose, in bad faith, or in a wanton or reckless manner.
4. Douglas was not entitled to summary judgment based on strict liability or *res ipsa loquitur* because *res ipsa loquitur* is an evidentiary doctrine permitting an inference of negligence, not a separate cause of action or independent theory of strict liability.

KEY QUOTATIONS

“Under Ohio law, courts apply a “three-tiered analysis” in determining whether a political subdivision is entitled to immunity under R.C. Chapter 2744.” (¶ 16)

*“The doctrine of *res ipsa loquitur* is not a theory of tort liability; rather it is the doctrine of evidence which permits a plaintiff to prove negligence circumstantially.” (¶ 45)*

FACTUAL BACKGROUND

Douglas was a sixth-grade student at Wedgewood Middle School who participated in a science-class rocket design and launch project supervised by teacher Kirk Bardos. Students constructed the rockets, and Bardos inspected and launched them using a remote-controlled launcher in an open area of the school parking lot.

Douglas's rocket rose approximately 15 feet, veered toward the students, and struck her ankle, causing burns and scarring; after the incident, Bardos observed that a fin had come off, although he could not determine when it detached.

PROCEDURAL HISTORY

Douglas sued the Columbus City Schools Board of Education, Columbus City School District, and Kirk Bardos after she was injured by a student-built rocket during a school science project. The trial court determined that the school district was not a proper party, held that the school board and Bardos were immune under R.C. Chapter 2744, granted appellees' motion for summary judgment, and denied Douglas's motion for summary judgment. The Tenth District affirmed.

DISPOSITION

affirmed

CASES CITED

- Nichols v. Staybridge Suites, 2009-Ohio-1381, ¶ 10 (10th Dist.)
- Grafton v. Ohio Edison Co., 77 Ohio St. 3d 102, 105 (1996)
- In re Protest of Evans, 2006-Ohio-4690, ¶ 8 (10th Dist.)
- Hoffman v. Gallia Cty. Sheriff's Office, 2017-Ohio-9192, ¶ 38 (4th Dist.)
- Smith v. McBride, 130 Ohio St. 3d 51, 2011-Ohio-4674, ¶¶ 13-15
- Fleming v. Vanguard Sentinel Joint Vocational School, 2003-Ohio-2134, ¶ 10 (6th Dist.)
- Hamrick v. Bryan City School Dist., 2011-Ohio-2572, ¶ 25 (6th Dist.)
- Jones v. Delaware City School Dist. Bd. of Edn., 2013-Ohio-3907, ¶¶ 22, 24 (5th Dist.)
- Diaz v. Cuyahoga Metro. Housing Auth., 2010-Ohio-13, ¶ 13 (8th Dist.)
- Leasure v. Adena Local School Dist., 2012-Ohio-3071 (4th Dist.)
- Moss v. Lorain Cty. Bd. of Mental Retardation, 185 Ohio App. 3d 395, 2009-Ohio-6931, ¶¶ 16, 19 (9th Dist.)
- Elston v. Howland Local Schools, 113 Ohio St. 3d 314, 2007-Ohio-2070, ¶¶ 20, 31-32
- Marcum v. Talawanda City Schools, 108 Ohio App. 3d 412, 416 (12th Dist. 1996)
- Banchich v. Port Clinton Public School Dist., 64 Ohio App. 3d 376, 378 (6th Dist. 1989)
- Mosely v. Dayton City School Dist., 2d Dist. No. 11336 (July 6, 1989)
- Sargeant v. Gallipolis Bd., 4th Dist. No. 92 CA 43 (Oct. 14, 1993)
- Fields v. Talawanda Bd. of Edn., 2009-Ohio-431, ¶ 13 (12th Dist.)
- Angelot v. Youngstown Bd. of Edn., 7th Dist. No. 96 CA 90 (Sept. 18, 1998)
- Folmer v. Meigs Cty. Commrs., 2018-Ohio-31, ¶ 34 (4th Dist.)
- Essman v. Portsmouth, 2010-Ohio-4837, ¶ 60 (4th Dist.)
- Piro v. Franklin Twp., 102 Ohio App. 3d 130, 139 (9th Dist. 1995)
- Lindsey v. Summit Cty. Children Servs. Bd., 2009-Ohio-2457, ¶ 16 (9th Dist.)

- Fabrey v. McDonald Village Police Dept., 70 Ohio St. 3d 351, 356 (1994)
- Thompson v. McNeill, 53 Ohio St. 3d 102, 104 (1990)
- Simmons v. Yingling, 2011-Ohio-4041, ¶ 43 (12th Dist.)
- Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs., 118 Ohio St. 3d 392, 2008-Ohio-2567, ¶ 37
- Kniskern v. Twp. of Somerford, 112 Ohio App. 3d 189, 198 (10th Dist. 1996)
- Nester v. Textron, Inc., D.C.W.D. Tex. No. 1:13-CV-920-DAE (Dec. 22, 2015)
- Haddock v. Arnspiger, 793 S.W.2d 948, 950 (Tex. 1990)

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