

Important Court Cases for the Superintendent and Operations Staff

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Baker v. Wayne County

Decided by Ohio Supreme Court on April 19, 2016

Originally filed in Wayne County Court of Common Pleas in late 2011

Summary judgment for Wayne County, therefore county not liable

Court of Appeals reversed trial court in October 2014 and sent back to Wayne County for possible jury trial

Ohio Supreme Court Decision

Ohio Supreme Court accepted Wayne County's appeal request, reversed Court of Appeals, and ruled in favor of Wayne County on April 19, 2016

The Ohio Supreme Court specifically held:

Sovereign immunity-exception for negligent failure to keep public roads in repair under RC 2744.02(B)(3). The exception does not apply because the edge drop at limit of paved roads is part of the berm or shoulder and does not come within the definition of public road under RC 2744.01(H).

Facts and Procedural History

On October 19, 2011, a 17 year old student was driving south on CR 44 which is a two lane road in Wayne County. It was raining and before sunrise.

As she was driving, one of Baker's tires slipped off the right side of the road. She over-corrected, causing the vehicle to go off the right side of the road where it struck a concrete deer statue and a tree. The car caught fire and tragically, Baker died at the scene.

The Ohio State Highway Patrol investigation determined that an unsafe speed for the conditions and the driver's age and driving inexperience were contributing factors to the accident.

Facts and Procedural History

The day before the accident, CR 44 had been scratch paved, resulting in a 4.5 to 5 inch drop from the edge of the pavement to the berm. There were no painted edge lines or additional berm material laid to make the berm level with the surface of the road.

Before resurfacing, there were painted edge lines, but there were no edge lines at the time of the accident. The court noted that the Ohio Manual of Uniform Traffic Control Devices does not require edge lines on CR 44.

Facts and Procedural History

Baker's parents filed a wrongful death lawsuit against Wayne County in Common Pleas Court. Following discovery and depositions of witnesses, Wayne County filed for summary judgment which the trial court granted.

Baker's parents appealed and the Ninth District Court of Appeals reversed and sent the case back to the trial court. The Court of Appeals ruled the county could be held liable for "negligently failing to keep a public road in repair" because the area was under the control of the county and open to the travelling public. This would have resulted in a jury trial in the Wayne County Court of Common Pleas.

Wayne County appealed to the Ohio Supreme Court which agreed to hear the case.

Ohio Supreme Court Decision and Rationale

As a general rule, state and local governments are immune from lawsuits under a legal concept known as sovereign immunity, but there are exceptions. One of the exceptions is set forth in RC 2744.02(B)(3) for the “negligent failure to keep a public road in repair.” Whether this exception applies depends on whether the definition of public roads includes the 4.5 to 5 inch drop at the edge of the road.

The General Assembly has defined what constitutes a public road and what does not. RC 2744.01(H) defines public roads to mean public roads, highways, streets, avenues, alleys and bridges. Public roads does not include berms, shoulders, rights-of-way or traffic control devices unless such devices are mandated by the Ohio Manual of Uniform Traffic Control Devices.

Ohio Supreme Court Decision and Rationale

The Court criticized the Court of Appeals decision for expanding the statutory definition of public roads to include the area under the control of the political subdivision during the repair work and open to the traveling public.

Instead, the Ohio Supreme Court looked at the statutory definition of public roads which specifically excludes berms and shoulders. Therefore, if an edge drop is part of the berm or shoulder, then the exception to sovereign immunity does not apply.

Ohio Supreme Court Decision and Rationale

The Ohio Supreme Court concluded that when Baker's car traveled off the edge of the pavement, it left the public road and dropped onto the berm or shoulder. Because the berm and shoulder are statutorily excluded from the definition of a public road, the exception to sovereign immunity does not apply and Baker's claims against Wayne County are barred by sovereign immunity.

Specifically, the Ohio Supreme Court, in a 4 to 3 decision, held that the edge drop at the limit of a paved road is part of berm or shoulder and is specifically excluded from the statutory definition of public road. For this reason, the court reversed the decision of the Ninth District Court of Appeals and reinstated the trial court's grant of summary judgment in favor of Wayne County.

Dissenting Opinion

The dissenting opinion focused on whether CR 44 was “in repair” on the morning of the accident. The dissent mentioned specifically that county employees acknowledged that the edge drop was higher than normal and the county did little to mitigate the danger.

Specifically, the county did not lower the 55 mile-per-hour speed limit and it did not post a “Low Shoulder” sign for drivers travelling in Baker’s direction north of the accident scene, even though it had posted a sign south of the accident scene. Finally, the dissent stated that ODOT specifications require that a drop exceeding two inches should be delineated with traffic control devices such as drums and lights.

Questions, Comments, & Discussion

Which workers were required to give depositions?

Other Recent Cases Impacting County Engineers

Link v. FirstEnergy Corp; Cleveland Illuminating Company

Ohio Supreme Court July 26, 2016

This case involved an accident that occurred after Mr. Link struck a deer while driving his motorcycle on a township road in Geauga County. He lost control of his motorcycle, left the roadway, and his motorcycle struck a utility pole.

The utility pole in question had been a source of contention between the township, the Geauga County Engineer, and the utility company (CEI). In 2008, CEI transmitted their original utility relocation plans for Savage Road to the Geauga County Engineer. Those plans included relocating the utility pole in question.

Link v. CEI

Prior to the winter of 2008-2009, CEI relocated certain utility poles, but it did not relocate eight utility poles along the west side of Savage Road. The Geauga County Engineer responded in writing about the decision not to relocate the poles but CEI never moved the poles and the road was eventually reopened.

Link prevailed at the trial court and Court of Appeals level and CEI appealed to the Ohio Supreme Court. CEI argued that the statutory permission granted to utilities by RC 4931.03 to maintain poles in the unincorporated area of an Ohio township gives the utility company broad authority to locate and maintain the poles along the right of way unless the governing public authority has taken specific action to limit or cancel the statutory permission.

Link v. CEI

The Links argued that RC 4931.03 does not authorize a utility company to determine the placement of utility poles along the public roads and highways in unincorporated areas of townships. Instead, RC 5547.03 and RC 5547.04 authorize the county engineer to require utilities to remove obstructions that interfere with road improvements and repairs.

The Ohio Supreme Court issued its opinion on July 26, 2016 which reversed the judgment of the Eighth District Court of Appeals and remanded the matter to the trial court to enter judgment for the appellants First Energy Corporation and CEI.

Link v. CEI

The court concluded that CEI and First Energy were not required by any applicable law pursuant to RC 4931.03 to move the pole involved in Link's accident or to obtain a permit to leave the pole in its existing position. The court concluded that the pole did not incommode or interfere with the usual and ordinary course of travel on Savage Road and therefore CEI and First Energy cannot be held liable.

In the majority opinion, Judge French suggested the result might have been different if the board of county commissioners had taken affirmative steps to order the removal of the utility pole. A board of township trustees or commissioners may declare a utility pole to be a public nuisance and order its removal.

Upon refusal to comply, the board can order the object's removal and certify the expense to the county auditor to be collected in the same manner as a tax.

Piketon v. Coleman Construction

Village of Piketon, Ohio v. Boone Coleman Construction, Inc.

On February 24, 2016, the Ohio Supreme Court issued its opinion on this case. At issue was a \$277,900 “liquidated damages” judgment against a construction company hired by the village of Piketon. The total value of the construction contract was \$683,000 but it was completed 397 days late. The parties had contractually agreed to a \$700 per day liquidated damages charge for each day the project was late.

The Ohio Supreme Court vacated the decision by the appellate court that focused on the total value of the fine in relation to the total value of the contract. Instead, the Ohio Supreme Court stated that the appellate court should have just looked at whether the per-day amount agreed to in the contract was fair.

Toledo Edison v. Defiance County

Toledo Edison v. Defiance County

Ohio Court of Appeals Third District 2013

This case involved a road widening and the relocation of utility poles located within the county's right of way. In 2012, the Defiance County Board of Commissioners adopted a resolution ordering Toledo Edison to remove or relocate (at their expense) certain utility poles determined to be an obstruction.

Toledo Edison filed suit in the Defiance County Court of Common Pleas which vacated the order of the County Commissioners. The Board of County Commissioners appealed the Common Pleas Court's decision. The issue is who pays for the relocation of the utility poles.

Toledo Edison v. Defiance County

On December 9, 2013, the Court of Appeals reversed the judgment of the trial court and remanded the case back to the Defiance County Common Pleas Court for further proceedings consistent with the Court of Appeals decision. The Court of Appeals decision strongly supports the authority of County Commissioners and County Engineers to order utility companies to remove obstructions from the roadway at the utility's expense.

Ohio v. Cargill and Morton Salt

State of Ohio v. Cargill and Morton Salt

Tuscarawas County Court of Common Pleas

The Ohio Attorney General filed an antitrust lawsuit in March 2012 against Cargill and Morton Salt alleging action that resulted in above-market prices being paid by the Ohio Department of Transportation and other governmental entities around the state for rock salt.

The complaint alleged that the two companies divided up the Ohio rock salt market between themselves, agreeing not to compete with each other thereby driving up rock salt prices.

The case was settled for \$11.5 million on June 4, 2015. Ohio public entities that purchased rock salt from Morton Salt or Cargill during the period July 1, 2008 to June 30, 2011 were eligible to receive a share of this settlement. Of the total settlement, \$6.8 million was available to local governments.

Questions?
