

## **Ohio 2<sup>nd</sup> District Affirms Dismissal of School Employees on Immunity Grounds**

On April 16, 2021, the Court of Appeals of Ohio Second Appellate District in Clark County (the “Second District”) affirmed the dismissal of school district employees in *Cline v. Tecumseh Local Board of Education (Cline v. Tecumseh Local Bd. of Edn.*, 2d Dist. Clark No. 2020-CA-36, 2021-Ohio-1329, 2021 WL 1501499 - April 16, 2021). The court affirmed that an employee, or employees, of a political subdivision are generally immune from liability under the Political Subdivision Tort Liability Act (“PSTLA”). The PSTLA grants school districts, and school employees, broad immunity from civil liability. In upholding the trial court’s decision, the Second District found that the appellants failed to provide sufficient facts to survive Defendants’ motions to dismiss or to bypass immunity.

RCO Law Attorneys Bill Beach and Jeff Smith defended Clark County Educational Service Center against Plaintiffs’ 10-count complaint that alleged, among other things, negligent hiring, training and supervision. The suit, filed in 2019, was initiated by the parents of two young children who were allegedly bussed to an afterschool program without parental authorization. The children were on the bus for 20 minutes until they were returned to the school where a parent waited. The parents claimed that the bus driver and other unnamed school employees caused emotional distress, among other things, by removing the children from the school without permission. The suit also named Tecumseh Schools, its school board president, and its superintendent.

In early 2020, both Tecumseh Schools and the Clark County Educational Service Center filed motions to dismiss on behalf of the respective organizations and employees. The motions asserted that the defendants were immune pursuant to the PSTLA and that the facts alleged were insufficient to support Plaintiffs’ tort claims. In July 2020, the trial court granted defendants’ motions to dismiss holding, “all named defendants are entitled to statutory immunity pursuant to the Ohio Revised Code Section 2744.02(A)(1).”

The Clines appealed. On April 16, 2021, Second District rendered a final decision affirming that the trial court did not err in granting the motions to

dismiss. The Second District held that Plaintiffs failed to assert sufficient facts of malice or bad faith against the school-employee defendants to overcome PSTLA immunity. Mere “buzz words” in the Complaint related to malice, bad faith and recklessness were insufficient to survive motion to dismiss.

In addition, the appellate court held Plaintiffs’ claims against fictitiously named school district employees – “Jane Doe” defendants—must be dismissed because Plaintiffs did not know the identity of the fictitious defendants. Civ.R. 15(D) only permits naming a defendant by “any name” when the plaintiff does not know the “name of a defendant”; it does not apply when a plaintiff does not know the *identity* of a defendant. As the Second District recognized, “Civ.R. 15(D) does not allow a plaintiff to set up a ‘straw man’ to facilitate a fishing expedition, and that is what he had here.”

This case is illustrative to school districts and their employees who seek early dismissal on immunity grounds.