

Case No. 2014-0727

IN THE SUPREME COURT OF OHIO

On Appeal from the First District
Court of Appeals, Hamilton County
Case No. C 1300122

AMBER SALLEE, et al.,
Plaintiff-Appellee

v.

STEPHANIE WATTS, et al.,
Defendant-Appellant

**BRIEF OF AMICUS CURIAE
THE OHIO ASSOCIATION FOR JUSTICE
IN SUPPORT OF APPELLEE**

Drew Legando (0084209)
LANDSKRONER GRIECO MERRIMAN, LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
T. (216) 522-9000
F. (216) 522-9007
E. drew@lgmlegal.com

Counsel for Amicus Curiae OAJ

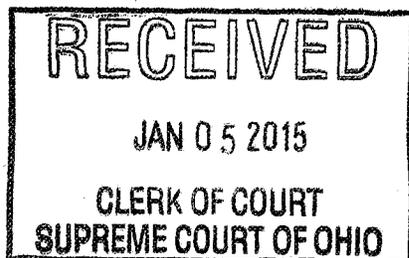
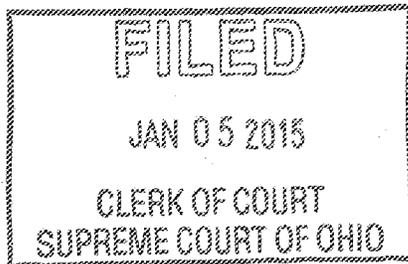


TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

ARGUMENT 1

I. Re-Statement of the Issue1

II. The Plain Meaning of “Operation” Includes Starting the Bus and Driving It Away
from a Stop.....1

III. Revised Code 4511.75(E) Sets forth a Duty, the Breach of which May Constitute
Negligence2

IV. Precluding Recovery in this Case Will Not Serve Public Policy.....3

CONCLUSION..... 4

TABLE OF AUTHORITIES

Cases

<i>Culwell v. Brust</i> , 91 Ohio App. 309, 314 (4 th Dist. 1949)	2
<i>Doe v. Marlinton Local Sch. Dist. Bd. of Educ.</i> , 122 Ohio St.3d 12, 2009-Ohio-1360.....	1
<i>Middletown v. Campbell</i> , 69 Ohio App.3d 411, 416 (12 th Dist. 1990), <i>appeal dismissed</i> 58 Ohio St.3d 713 (1991).....	2
<i>Turner v. Central Local Sch. Dist.</i> , 85 Ohio St.3d 95, 101 (1999).....	2

Statutes

R.C. 2744.02	1
R.C. 2744.02(B)(1)	2, 3
R.C. 4511.01(HHH).....	1
R.C. 4511.75(E).....	2, 3

Other Authorities

Webster's II New College Dictionary (3d Ed. 2005) 786	1
---	---

STATEMENT OF INTEREST

The Ohio Association of Justice (OAJ) is a group of practicing attorneys who represent children and families who are harmed by the negligence of others. The members of OAJ represent clients throughout our civil justice system, seeking to hold public and private institutions accountable for their actions.

ARGUMENT¹

I. Re-Statement of the Issue

Although Appellant Three Rivers Local School District has broken its appeal down into three propositions of law, it can be distilled to the following question:

When a school bus driver starts a bus before a child has alighted to a place of safety on the child's residence side of the road, has the driver "operated" the bus such that the exception to immunity set forth in R.C. 2744.02(B)(1) has been satisfied?

The answer to this question should be *yes*. Starting a bus—disengaging the break, pressing on the gas pedal, steering the bus, and moving the bus forward—are the quintessential elements of "operating" a motor vehicle.

II. The Plain Meaning of "Operation" Includes Starting the Bus and Driving It Away from a Stop

The word *operation* is not defined by R.C. 2744.02. Therefore the word "should be afforded its plain and ordinary meaning." *Doe v. Marlinton Local Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, at ¶ 18. In *Doe*, this Court found the plain and ordinary meaning of the word *operation* refers to "driving or otherwise causing the vehicle to be moved." *Id.* at ¶ 26. In reaching that conclusion, the Court relied on Webster's definition of *operate*: "to control or direct the functioning of." *Id.* at ¶ 20, quoting Webster's II New College Dictionary (3d Ed. 2005) 786. It also relied on the General Assembly's definition of *operate* in R.C. 4511.01(HHH): "to cause or have caused movement of a vehicle." *Id.* at ¶ 23.

¹ OAJ defers to Appellee Sallee's *Statement of Facts*.

What did bus driver Krimmer do in this case? She ‘drove or otherwise caused the bus to be moved.’ She ‘controlled and directed the functioning of the bus.’ And she ‘caused the movement of the bus.’ Under any definition, she *operated* the school bus, driving it away from Amber Sallee’s stop.

Therefore, if such “operation” was negligent, then the exception to immunity set forth by R.C. 2744.02(B)(1) is satisfied. More to the point, if there is a genuine issue of material fact—that is, if a reasonable juror could decide that such operation was negligent—then summary judgment must be denied. Since the First District held that this case should go to a jury, its judgment should be affirmed.

III. Revised Code 4511.75(E) Sets forth a Duty, the Breach of which May Constitute Negligence

For over 60 years, Ohio courts have recognized that, when a school bus starts away from a stop before a child has reached a place of safety, the bus driver may be found negligent. *E.g.*, *Culwell v. Brust*, 91 Ohio App. 309, 314 (4th Dist. 1949) (“So long as the bus remained standing, all traffic was stopped ... but the moment the bus started this statutory safeguard, enacted for the purpose of protection school children, was of no avail.”). Indeed, in *Turner v. Central Local Sch. Dist.*, 85 Ohio St.3d 95, 101 (1999), this Court held that R.C. 4511.75(E) imposes a duty of care, which, if violated under the facts of the case, constitutes negligence.

In fact, the Twelfth District held that R.C. 4511.75(E) is a “public welfare statute to which strict liability may be applied,” and this Court declined to review that decision. *See Middletown v. Campbell*, 69 Ohio App.3d 411, 416 (12th Dist. 1990), *appeal dismissed* 58 Ohio St.3d 713 (1991).

Bus driver Krimmer started her bus even though Amber Sallee was not at the statutorily-defined place of safety. A jury can certainly find that Krimmer violated the statute and was, therefore, negligent. Krimmer argues that, because Amber was not struck by another vehicle until the bus was down the road a couple stops, the exception to immunity does not apply. But this is an argument about causation—whether Amber’s injuries were proximately caused by

Krimmer's negligence. This question should be left to the jury to decide under the particular facts and circumstances of this case.

The fact that Krimmer had driven down the road has no bearing on whether Krimmer violated the statute in the first place. Nor does it have any bearing on whether a violation of R.C. 4511.75(E) may constitute negligence. Nor does it have any bearing on whether such negligence involves the "operation" of a motor vehicle for purposes of the immunity exception—which is the only question of great and public interest posed by this appeal.

IV. Precluding Recovery in this Case Will Not Serve Public Policy

The Court of Appeals, the Appellant and its *amicus* argue that schools and their bus drivers will be left in an untenable position if a violation of R.C. 4511.75(E) can satisfy the immunity exception of R.C. 2744.02(B)(1).

As an initial matter, the notion that school districts or their employees will be exposed to financial liability for cases like this one is simply not true. In the real world, school districts carry automobile liability policies like most individuals and businesses. The premiums for such policies are small, and are but a tiny line-item hardly worth mentioning on the budgets of school districts across the state. Schools districts and the taxpayers who fund them are not experiencing losses or hardship from tort cases brought under R.C. 2744.02(B)(1).

More to the point, what the Appellant is really arguing is that R.C. 4511.75(E) is too hard to follow. If that is true, school districts ought to lobby the General Assembly to change the law—but asking this Court to simply excuse them from it is a violation of basic principles of separation of powers and judicial review.

In any event, R.C. 4511.75(E) does *not* put bus drivers in the no-win scenario imagined by the Appellant. Bus drivers like Krimmer have plenty of viable options other than driving away from a stop in violation of the statute: they can call the child's parents, they can call the police, they can call an administrator or dispatch for assistance. And school districts can be proactive: they can ask parents for phone numbers of those who will be receiving children from

bus stops, put the numbers on a list, and give them to bus drivers to use if the children are not compliant with alighting protocols. Schools can issue better directives to students riding the bus about reaching an area of safety, and they can impose discipline (e.g., demerits) for violations of these rules. Schools can issue better instructions to parents and others receiving children from the bus stop.

This is almost certainly what the General Assembly had in mind when it passed a law that had plain and unambiguous language, a clear mandate, and no wiggle room: “No school bus driver shall start the driver’s bus until after any child ... who may have alighted therefrom has reached a place of safety on the child’s ... side of the road.”

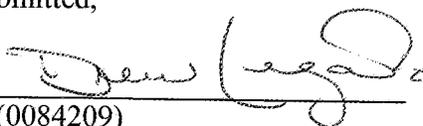
CONCLUSION

Revised Code 4511.75(E) sets forth a duty of care to be exercised by bus drivers. Breach of that duty may constitute negligence. Since the breach involves “start[ing]” a motor vehicle and driving it away from a stop, the negligence arises from the “operation” of a motor vehicle and falls under the exception to immunity set forth in R.C. 2744.02(B)(1).

The judgment of the Court of Appeals should be affirmed and this case remanded to the trial court for further proceedings.

Respectfully submitted,

s/ *Drew Legando*


Drew Legando (0084209)

LANDSKRONER GRIECO MERRIMAN LLC

1360 West 9th Street, Suite 200

Cleveland, Ohio 44113

T. (216) 522-9000

F. (216) 522-9007

E. drew@lgmlegal.com

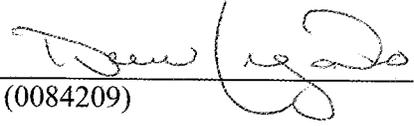
Counsel for OAJ

PROOF OF SERVICE

A copy of this document was served by email on counsel of record on January 2, 2015, pursuant to Civil Rule 5(B)(2)(f).

Signed by,

s/ *Drew Legando*

A handwritten signature in cursive script that reads "Drew Legando". The signature is written in black ink and is positioned to the right of the typed name "Drew Legando".

Drew Legando (0084209)