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A. SIGNIFICANT OHIO COURT DECISIONS

1. Supreme Court Decisions

a. Governmental Immunity Decisions

Agrabrite v. Neer et al., Slip Opinion No. 2016-Ohio-8374
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8374.pdf

Where a Third Person Is Accidentally Injured As a Result of Police Action, Ohio Rev. Code 2744.03(A)(6)(b) Applies

Plaintiff was injured in a motor vehicle accident allegedly caused by a high-speed police chase while pursuing a suspect. The suspect's vehicle struck Plaintiff's vehicle. Plaintiff was injured, and sued the police for negligence. The trial court granted summary judgment in favor of the officers, concluding, as a matter of law: (1) A police officer who pursues a suspect is not the proximate cause of injuries to a third party unless the officer's conduct is extreme and outrageous; and (2) Under this standard, no reasonable juror could conclude that the officers' actions were the proximate cause of the accident. The Court of Appeals affirmed. The Supreme Court also affirmed, albeit on different grounds, holding: (1) The no-proximate-cause standard applied by the court of appeals in this case is contrary to Ohio Rev. Code 2744.03(A)(6)(b), which provides that law enforcement officers are immune from liability unless they act maliciously, in bad faith, or in a wanton or reckless manner; and (2) applying the correct standard set forth in section 2744.03(A)(6)(b), the officers could not be held liable for damages as a result of their actions.

b. Other Significant Decisions

Gyugo v. Franklin Cty. Bd. Of Dev. Disabilities, Slip Opinion No. 2017-Ohio-6953
(July 27, 2017)
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-6953.pdf

Employee Not Excused From Disclosing Sealed Conviction on Application When Question Requires Disclosure of Sealed Convictions

Plaintiff, defendant's employee, was terminated from his position after he failed to disclose his sealed criminal conviction on his application for employment, as well as on applications to renew his registration as an adult service worker. At issue in this case is whether the registration applications that explicitly required disclosure of sealed convictions were in violation of R.C. 2953.33(B). The Supreme Court determined plaintiff was not excused from "honestly" answering those questions because the questions bore a direct and substantial relationship to plaintiff's position and to his qualifications for registration. Plaintiff's termination was upheld because his denial of a sealed criminal conviction on four registration applications constituted dishonesty.

Johnson v. Montgomery, Slip Opinion No. 2017-Ohio-7445 (September 6, 2017)
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-7445.pdf

Under Dram Shop Act, "Intoxicated Person" Includes Workers, Not Just Permit Holder's Patrons

Plaintiff was injured in an automobile accident while riding as a passenger. The other vehicle was driven by defendant d, a strip club dancer. Dancer was intoxicated due to drinking during her shift. Under Ohio's Dram Shop Act, someone injured by an "intoxicated person" may sue a liquor-permit holder for an off-premises injury only when the permit holder or its employee served the person knowing them to be intoxicated. At issue in this case is whether dancer qualifies as an "intoxicated person" under the statute or whether the term only encompassed the permit holder's patrons. The Supreme Court held that an "intoxicated person," under the Dram Shop Act, includes *any* person, not just a permit holder's patrons. Therefore, the Dram Shop Act applies to a permit holder who sold intoxicating beverages to a worker whose intoxication causes an injury.

2. Appellate Court Decisions

a. Insurance Coverage Decisions

Harris v. Transamerica Advisors Life Ins. Co., 2017-Ohio-341(6th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-341.pdf

There is No Breach of Contract or Bad Faith When an Insurer Calculates a Death Benefit According to the Last Quarterly Statement and the Policy Language Makes this Procedure Clear

Plaintiff children filed suit against their deceased mother's life insurance company for breach of contract and bad faith. Insurer paid the death benefit equally to plaintiffs by calculating the death benefit as listed on the last quarterly statement. Plaintiffs argue the insurer should have paid a substantially higher premium based on the percentage calculation of the benefit at the time of death, rather than from the last quarterly statement. The language in the policy unambiguously stated the death benefit would be recalculated each quarter, and may change daily. Therefore, the trial court granted summary judgment. The court of appeals affirmed, finding no breach of contract or insurer bad faith when the insurer follows the unambiguous language to calculate a death benefit.

Canfield Motor Sports, Inc. v. Motorist Mut. Ins. Co., 2017-Ohio-735 (7th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2017/2017-Ohio-735.pdf

Circumstantial Evidence Was Sufficient to Entitle Insured Merchant to Coverage for Loss Due to Trick, Scheme, or False Pretense

Motorcycle merchant's commercial general liability policy contained a "false pretense clause" which provided coverage where a person caused the merchant to voluntarily part with a motorcycle by trick, scheme, or under false pretenses. Merchant contracted with an auction house to sell motorcycles at a public auction, and the bikes were sold. However, the auction house did not remit payment to the merchant. Rather, the auction house filed bankruptcy protection, and the merchant sought reimbursement for the sold bikes under the policy. Merchant filed a declaratory judgment action, and prevailed. On appeal, the court determined that generally

a trick or scheme must exist at the time of the transfer of the bikes. However, the court also concluded that, in this case, the chain of events that took place prior to the bankruptcy was sufficient to infer fraudulent intent, thereby triggering coverage.

b. UM/UIM Decisions

Koepke v. Metro. Property & Cas. Ins. Co., 2017-Ohio-4084 (10th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-4084.pdf

Anonymous Hit-and-Run Driver may be Liable for Negligence if the Trier of Fact Determines Driver Was Proceeding Unlawfully At the Time of Accident

Insured pedestrian was injured by a hit-and-run driver while trying to cross the road. Insured filed suit against her insurer for breach of contract based on her belief that her policy provided uninsured motorist coverage. The policy provided coverage for bodily injury caused by uninsured motorists, but only if insured was legally entitled to collect those damages from the uninsured motorist. Because plaintiff could not prove the hit-and-run driver was negligent, summary judgment was granted in favor of the insurer. The court of appeals reversed and remanded to the trial court, holding a question of fact existed regarding whether the hit-and-run driver violated R.C. 4511.33(A) (requiring a driver to drive entirely within a single lane of traffic), and concluded that if the hit-and-run driver was proceeding unlawfully when he hit plaintiff, then the driver may be liable for negligence.

Sherer v. Progressive, 2017-Ohio-7278 (6th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-7278.pdf

Insured Bicyclist Attempting to Cross the Road Is Not Entitled to Uninsured Motorist Coverage Under Policy in Absence of Evidence Establishing a Duty Owed By a Hit-And-Run Motorcyclist to the Insured

Bicyclist was injured by a hit-and-run motorcyclist while attempting to cross a heavily traveled intersection. Bicyclist brought an action against his insurer based on a denial of coverage. The trial court granted summary judgment in favor of the insurer, holding that although the motorcyclist was speeding, the collision would have nonetheless occurred because of the bicyclist bolting into oncoming traffic while the motorcycle was two car lengths away from the intersection. The court of appeals upheld the decision because there was no record of evidence presented in which anyone could be deemed to have breached a duty to the bicyclist such that proximate cause and liability could potentially be attributed.

Collins v. Auto-Owners Ins. Co., 2017-Ohio-880 (12th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2017/2017-Ohio-880.pdf

Son of Decedent is not "Relative" Under Policy and, Consequently, Not Entitled to UIM Benefits

Plaintiff was injured in an automobile accident in which he was not at fault. Plaintiff settled his claim with tortfeasor's insurer, but plaintiff's damages exceeded the tortfeasor's policy limits. Plaintiff then filed a declaratory judgment action seeking a declaration the policy provided UIM

coverage. The trial court concluded plaintiff was a "relative" under the policy, and concluded plaintiff was entitled to UIM benefits. The appellate court disagreed, and concluded the plaintiff was not entitled to UIM benefits, because plaintiff did not reside with his father at the time of the accident, because his father had passed away two years earlier. Thus, plaintiff was not an "insured" for UIM purposes under the policy.

c. Employment Decisions

Dunn v. GOJO Industries, 2017-Ohio-7230 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7230.pdf

Employer Did Not Discriminate against Employee Discharged for Sleeping on The Job

Plaintiff was hired for her position when she was 56 years old in 2008. In 2015, several co-workers observed plaintiff sleeping at her desk. Co-workers took pictures and a video of plaintiff sleeping. Plaintiff was observed snoring in the video. Plaintiff alleged that she was resting her eyes to cope with a migraine. Co-workers reported this incident to plaintiff's supervisor. Supervisor reported the incident to HR, and plaintiff's employment was terminated. Plaintiff's former officemate, who was in her late twenties, was assigned plaintiff's previous duties. Plaintiff sued employer, alleging disability and age discrimination in violation of R.C. 4112.02. At trial, defendant was awarded summary judgment. The court of appeals held that plaintiff failed to show that employer's reason for discharge, her sleeping on the job, was pretext for disability discrimination; employer did not have a duty to accommodate employee's alleged disability; and employee failed to show that employer's reason for discharge was pretext for age discrimination.

d. Premises Liability Decisions

Vaughn v. Firehouse Grill, L.L.C., 2017-Ohio-6967 (1st Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-6967.pdf

Testimony That the Color of a Ramp and the Abutting Parking Line Hid the Change in Elevation Between Ramp and Parking Lot Does Not By Itself Create A Genuine Issue of Material Fact to Preclude Summary Judgment

Customer filed a negligence claim against restaurant when she tripped on a handicap ramp while exiting restaurant. Customer had traversed the ramp three times prior to falling. She sued restaurant as property owner, and the company which painted the ramp. The trial court granted summary judgment in favor of the restaurant based on the "known peril" doctrine and the "open and obvious" doctrine. Trial court granted summary judgment in favor of the painters because they had subcontracted the work out, and did not direct or supervise the work. On appeal, the court affirmed summary judgment in favor of both restaurant and painting company, based upon the trial court's reasoning.

Kronjak v. New Plaza Mg. L.L.C., 2017-Ohio-1184 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-1184.pdf

Hole Underneath Plaintiff's Own Vehicle was Open and Obvious Hazzard Because of Plaintiff's Observation that Other Areas of Parking Lot Also Needed Repair

After leaving a restaurant, plaintiff stepped into a hole that was partly under her own car in plaza parking lot causing injury. The trial court awarded summary judgment to defendant concluding that the hole was an open and obvious danger, obviating defendant's duty to warn invitees of latent or hidden hazardous conditions. The court of appeals affirmed, noting plaintiff's husband testified that the parking lot needed repair before entering the restaurant. The fact that hole was located partly under plaintiff's car did not constitute an attendant circumstance sufficient to impose liability, because the vehicle was under their own control. An attendant circumstance must be created by the property owner, and must be beyond the control of the injured party.

Burke v. Giant Eagle, Inc., 2017-Ohio-4305 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-4305.pdf

Grocery Store Entitled to Summary Judgment Where Plaintiff Failed to Present Evidence The Store Had Constructive Notice of Liquid on Floor

Plaintiff entered grocery store to obtain a flu shot. While walking past the customer service desk, she slipped on a brown substance on the floor and fell. Plaintiff brought an action in negligence against defendant grocery store. Following discovery, defendant moved for summary judgment, which was granted. The court of appeals upheld the decision, holding that plaintiff did not present any evidence that grocery store had constructive notice of the liquid. Plaintiff slipped and fell moments after entering the store, she could provide no evidence for the duration of time the liquid remained on the floor, and no security footage existed.

Reeves v. St. Leonard, 2017-Ohio-7433, (2nd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-7433.pdf

The Presence of Wet Floor Signs Is Relevant Regarding the Issue of Whether Business Complied with Duty of Care

Plaintiff was injured after slipped and fell on a recently mopped floor inside fitness center. Plaintiff brought a personal injury action against defendant fitness center. Defendant filed a motion for summary judgment, which was granted on the basis the wet floor was an open and obvious hazard. On appeal, the court determined that the wetness of the floor was not readily discernible. Consequently, the open and obvious doctrine did not apply. However, the court found that the presence of wet floor signs located five to ten feet from the accident site was sufficient to satisfy the duty to warn business invitees of latent defects. Plaintiff also argued that he was distracted by an "attendant circumstance," but in the absence of an open and obvious hazard, the attendant circumstances doctrine is inapplicable.

Parker v. Red Roof Inn, 2017-Ohio-7595 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7595.pdf

Photos of Embankment Where Plaintiff Fell are Insufficient to Establish the Hazard was Open and Obvious

Plaintiff checked into a hotel, proceeded to back his truck into parking space abutting a steep embankment, and entered his hotel room. Plaintiff then left his room to check the tools in the back of his truck. While walking to the back of the vehicle, he felt the ground slip from under him, and fell down an embankment into a separate parking lot, several feet below. Plaintiff filed his complaint for personal injuries under principles of Ohio premises liability law. The trial court granted the hotel's motion for summary judgment on the basis the embankment was "open and obvious." Plaintiff appealed, and the court reversed, holding the trial court's decision was not supported by the evidence. On remand, the hotel filed the same motion supported, this time, by photographs of the embankment. The trial court, again, granted summary judgment in favor of defendant. On appeal, the court determined that the photos were not dispositive of the issue regarding whether the steepness of the embankment was "open and obvious." The case was remanded for trial.

May v. Kroger Co., 2017-Ohio-7696 (5th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-7696.pdf

Evidence of Stained Ceiling Tiles in Other Areas of Store is Not Evidence Water Puddles on the Floor Were Caused by a Leaking Ceiling.

Plaintiff was pushing her cart toward the grocery store deli when she slipped on a puddle. Plaintiff noticed that the ceiling of grocery store had a leak that caused the puddle, with drips falling every three to five seconds. The manager of the grocery store was not aware of the puddle prior to customer's fall. Plaintiff noticed stained ceiling tiles in other areas of the store. The trial court granted defendant's motion for summary judgment. The court of appeals held that plaintiff failed to present any evidence that defendant's officers or employees placed the water on the floor or that any officer or employee had actual knowledge of the water on the floor. Evidence of stained tiles and/or repaired tiles located in other areas of the store, not where plaintiff fell, is not direct evidence of a leaking roof.

e. Governmental Immunity Decisions

Caudill v. Columbus, 2017-Ohio-7617 (10th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-7617.pdf

In Claim for Excessive Force for Police Shooting Death of Plaintiff's Wife, Officer is Entitled To Immunity Where Conduct Does Not Rise to Recklessness

A Columbus police officer shot and killed plaintiff's wife after responding to a 911 call in which it was reported that she was cutting herself, in possession of a gun, and suicidal. The trial court granted officer's motion for summary judgment on the basis that reasonable minds could only conclude that his conduct did not rise to the level of recklessness, and was therefore entitled to immunity. Plaintiff appealed, arguing that there was a genuine issue of material fact in dispute as to whether the officer acted recklessly and wantonly. The appellate court held that defendant was

entitled to immunity because when the officer was responding to the call he knew the plaintiff's wife was suicidal and had access to a gun. The officer's actions were only negligent at best, considering the wife was pointing a gun at the officer prior to the shooting.

O.G. v. Middleburg Heights, 2017-Ohio-7604 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7604.pdf

City Entitled to R.C. 2744 Immunity While Operation of Gymnasium Where Plaintiff Did Not Demonstrate the Injury Was Caused by Physical Defects On or Within Those Grounds or Buildings

Minor was injured when he reached out to touch a gym divider curtain machine as it raised the curtain. The minor became entangled in the machine, and was not dislodged until a gym attendant lowered the screen. Minor sustained permanent damage to his arm. Minor's parents brought an action against the city for negligence and loss of consortium. The trial court granted summary judgment to defendants, holding they were entitled to political subdivision immunity. The appellate court held that although a political subdivision can be held liable for injury caused by the negligence of its employees, there must be a physical defect that caused the injury. Based on maintenance and repair records for the machine, there was no evidence that the gym divider constituted or contained a physical defect. The judgment of the trial court was affirmed.

Westport Ins. Corp. v. Stark Cty. Sanit. Eng. Dept., 2007-Ohio-7573 (5th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-7573.pdf

Political Subdivision is Entitled to Immunity When Backed Up Sewer System Flooded Apartment Building

Flooding occurred in an apartment building following 2.49 inches of rain in a short period of time. Insurer compensated the building owners for their property damages. As subrogee, insurer filed a complaint against defendant county sanitary sewer department for negligent maintenance of its sanitary sewer system. Defendant moved for summary judgment, claiming as a political subdivision, it was entitled to immunity under R.C. Chapter 2744. Defendant argued the sewer backup was caused by a torrential downpour and was not a maintenance issue. The court denied summary judgment, finding a genuine issue of material fact as to whether the sewer system was properly maintained. The court of appeals determined that the trial court erred based upon the weather reports, upkeep reports, and inspection records that were attached to the motion that showed no issue with maintenance. Once defendant met its burden, plaintiff presented an expert's report. The expert's conclusions were based on speculation, according to the appellate court, and held the trial court erred by overruling defendant's motion for summary judgment.

David v. Matter, 2017-Ohio-7351 (6th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-7351.pdf

Allegations of Recklessness In Complaint Was Sufficient to Support Negligent Infliction of Emotional Distress Claim

Administrator of decedent's estate and decedent's wife brought a wrongful death action against two city police officers who shot and killed decedent while responding to a call regarding a man with a gun. Decedent's wife also brought a claim for negligent infliction of emotional distress

regarding alleged reckless conduct of the officers. The lower court denied officers' motion for partial judgment on the pleadings regarding the claim for negligent infliction of emotional distress. On appeal, the court held that wife sufficiently alleged throughout her complaint that officers' conduct was reckless. Therefore, her claim fell within exception to statutory immunity, and the trial court's decision was affirmed.

f. Other Significant Decisions

Hoeflinger v. AM Mart, L.L.C., 2017-Ohio-7530 (6th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-7530.pdf

Liquor Store Owner Had No Liability Under Dram Shop Act, and Social Host Owed No Duty To Protect Motorist from Motorist's Own Negligence

Parents brought an action against liquor store and party host on behalf of their deceased son. Deceased was killed in a single car accident, after consuming alcohol at a party. Deceased was under the drinking age, but was legally an adult. At trial, the court granted defendants' motion for judgment on the pleadings because deceased was an adult whose injury was self-inflicted. Therefore, the complaint did not state a cause of action under the Dram Shop Act against defendant liquor store. On appeal, the court reasoned that because deceased was legally an adult, and defendant liquor store did not sell the consumed liquor to deceased, the Dram Shop Act was inapplicable. Regarding the social hosts, the court determined that no cause of action exists against social hosts who provide intoxicating beverages to an underage adult who suffered a self-inflicted injury or death due to intoxication. The judgment was therefore affirmed.

3. Federal Court Decision

Barbara Jackson v. Professional Radiology, No. 16-4171 (April 27, 2017)
http://www.opn.ca6.uscourts.gov/opinions.pdf/17a0160p-06.pdf

Collection of Medical Bills Directly From Insured Was Improper

Following an automobile accident, plaintiff was taken to the hospital. Plaintiff informed hospital that she had insurance. While at hospital, plaintiff received treatment from defendant health care provider. Defendant billing service did not submit treatment charges to plaintiff's insurer. Instead, defendant sent a letter to plaintiff seeking payment of the balance. When plaintiff did not make a payment, her account was transferred to defendant debt collector. The collector sent a letter to plaintiff requesting payment. Plaintiff advised the collector that she was represented by counsel. Plaintiff's attorney eventually negotiated a payment settlement, and obtained a release for the defendant health care providers' bills for services. However, plaintiff was again contacted for an outstanding balance. Plaintiff paid the balance and then brought a class action against all three defendants for violation of ORC 1751.60(A). At trial, defendant debt collector moved for judgment on the pleadings, and the other two defendants moved to dismiss for failure to state a claim. Both motions were granted. On appeal, the court held that debt collector was not subject to the Ohio statutory provision, and the decision was affirmed. However, the court determined that defendants healthcare provider and billing service sought payment directly from plaintiff. Therefore, both defendants were in violation of the statute, and the motion to dismiss for failure to state a claim should not have been granted.

B. SIGNIFICANT CASES PENDING BEFORE THE OHIO SUPREME COURT

Pelletier v. City of Campbell et al., 2016-Ohio-8097

Is a City Liable for An Accident When Foliage Impairs Ability to See a Stop Sign?

Plaintiff was involved in an automobile accident when she ran a stop sign and collided with another driver. Plaintiff claimed she did not see the stop sign because her view as blocked by foliage. Supreme Court will decide whether government immunity under R.C. 2744.02(B)(3) is applicable. Specifically, the court will address whether there has been a negligent failure to keep a public road "in repair," and possibly provide an operative meaning for what "in repair" means.

National Collegiate Athletic Association, et al. v. Steven Schmitz, et al., 2016-Ohio-8041

Can an Individual Experience an Injury, and Wait 40 Years to Ascertain the Full Severity of Injury Before Bringing Suit?

Decedent was a former college football player in the mid-1970s. Plaintiffs, deceased's wife and estate, allege that football program, where deceased played, incentivized deceased to make head injuries on himself and others—through helmet to helmet hits – as well as ignore concussion symptoms—by continuing to play and practice after experiencing symptoms of concussions. Plaintiffs' allege that, over time, deceased developed memory loss, cognitive decline, Alzheimer's, traumatic encephalopathy, and dementia, all caused by repetitive concussive blows, and sub-concussive blows to the head while playing football. Despite awareness of concussive effects at the time of injury, and worsening condition over time, Plaintiffs allege decedent was not required to bring his claim at any point prior to 2012. Supreme Court will decide whether the discovery rule permits the tolling of statues of limitations until plaintiffs learn the full severity of their injuries.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in any of these cases, we invite you to visit our website at http://www.smithrolfes.com.