Fire & EMS Liability in Ohio

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Outline of Topics

• Duty to Rescue
• Good Samaritan Act – R.C. 2305.15
• Ohio Political Subdivision Tort Liability Act – Chapter 2744 of the Ohio Revised Code
• Ohio Firefighter’s Rule and Its Exceptions
• The Importance of Documentation – “If you don’t write it down, it didn’t happen.”
Duty to Rescue

• Is there a general duty to rescue another person in danger?
• General Rule – “There is no general duty to go to the rescue of a person who is in peril.” *L.S. Ayres & Co. v. Hicks*, 40 N.E.2d 334 (Ind. 1942).
• Ohio Rule – “there is no duty to take affirmative action to aid or protect another from harm.” *Estates of Morgan v. Fairfield Family Counseling Center, Inc.*, 77 Ohio St.2d 1311, 673 N.E.2d 1311, 1997-Ohio-194, at footnote 2 (Ohio 1997).
• Legal duty?
  – No
• Moral duty?
  – Yes (at least let’s hope so).
Duty to Rescue

• Do any states impose a duty to rescue another person in danger?
  – Yes, three of them.
    • Minnesota – MINN. STAT. ANN. § 604A.01 (2000).
    • Vermont – VT. STAT. ANN. tit. 12, § 519(a) (2002).
  
• But **not** Ohio.
• What about off-duty *professional* firefighters and EMTs? Do they have a duty to rescue?
  – No.
• What about off-duty *volunteer* firefighters and EMTs? Do they have a duty to rescue?
  – No.
• Does it make a difference if an off-duty firefighter/EMT is wearing her uniform in a public place when the emergency occurs? (i.e., inside a Kroger, Macy’s, McDonald’s)
  – No.
Exceptions to the No-Duty to Rescue Doctrine

• 3 Basic Exceptions to No-Duty-To-Rescue Rule
  1. **Existence of a Special Relationship** Between Plaintiff and Defendant Imposes Duty on Defendant to Take Reasonable Affirmative Action to Aid Plaintiff
     - Common Carrier-Passenger (airplane, train, bus, subway)
     - Innkeeper-Guest (hotel, motel)
     - Teacher-Student
     - Owner/Occupier of Land-Entrant
     - Businessperson-Customer Relationship
     - Employer-Employee Relationship
  2. **Where Defendant is the Cause** of the Plaintiff’s Peril
  3. **Where There is a Voluntary Undertaking** by Defendant to Help Plaintiff and Detrimental Reliance by Plaintiff (or other available rescuers) on Defendant’s Promise to Render Aid
     - A voluntary act, gratuitously undertaken, must be performed with the exercise of due care under the circumstances. *Briere v. Lathrop Co.*, 22 Ohio St.2d 166, 258 N.E.2d 597 (Ohio 1970)
     - Drowning example – You can’t swim all the way out in the ocean to rescue a person in peril and then decide to change your mind.
     - Estoppel – If you actively prevent other potential rescuers from helping a victim in need of assistance, you cannot take shelter in the “no duty to rescue” rule if the victim suffers harm as a result.
       - Example – “No, don’t go for help. I’ll go for help.” And then change your mind.
Exceptions to No-Duty-to-Rescue Rule – California and Maryland

• *Soldano v. O’Daniels*, 141 Cal.App.3d 443, 190 Cal.Rptr. 310 (Cal. 1983) – bar owners have a duty to allow a Good Samaritan to use a public telephone on the premises to make a phone call on behalf of a person in need of assistance.

• *Griffith v. Southland Corp.*, 94 Md.App. 242, 617 A.2d 598 (Md. 1992) "there is no precedent which permits a bystander to refuse to call 911 when not exposed to imminent danger. Even if there were such an uncivilized and shocking principle, blind allegiance would invite disdain and disrespect for the courts."
Good Samaritan Act

Ohio Good Samaritan Act –
General Overview

- Ohio’s Good Samaritan Act – R.C. 2305.23
- What does the Act say?
  - “No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.” R.C. 2305.23.
  - “Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.” R.C. 2305.23.
Ohio Good Samaritan Act – Willful and Wanton Misconduct

- What is “willful and wanton misconduct”?
  - "Willful Misconduct" has been defined by the Ohio Supreme Court as "an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposely doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury." *Tighe v. Diamond*, 149 Ohio.St. 520, 527 (Ohio 1948); *Hancock v. Ashenhurst*, 10th Dist. No. 03AP-1163, 2004-Ohio-3319, ¶ 11. The "intent" needed for willful misconduct "relates to the misconduct, not to the result, and, therefore, an intent to injure need not be shown." *Brockman v. Bell*, 78 Ohio. App.3d 508, 515 (Ohio 1992). Willful misconduct involves "something more than negligence and it involves a more positive mental state prompting the injurious act than does wanton misconduct." *Id.*
  - "Wanton Misconduct" has been defined by the Ohio Supreme Court as "the failure to exercise any care whatsoever." *Fabrey v. McDonald Police Dept.*, 70 Ohio. St.3d 351, 356 (Ohio 1994)(citing *Hawkins v. Ivy*, 50 Ohio St.2d 114, syllabus (Ohio 1977)). To establish "wanton misconduct," the evidence must show a "disposition to perversity on the part of the tortfeasor," such that, "the actor must be conscious that his conduct will, in all likelihood, result in an injury." *Id.* The issue of wanton misconduct is normally a jury question. *Matkovich v. Penn. Cent. Transp. Co.*, 69 Ohio St.2d 210 (Ohio 1982). Wanton misconduct is the failure to exercise any care whatsoever. Mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor. Such perversity must be under such conditions that the actor must be conscious that his conduct will in all probability result in injury." *Johnson v. Baldrick*, 2008-Ohio-1794, ¶29 (Ohio Ct. App. 12 Dist. 2008).
Ohio Good Samaritan Act – Practical Takeaways

• 3 Practical Takeaways
  – General Rule #1 – if you decide to help out a person in need during an emergency, that person cannot turn around and sue you for money damages unless they can prove that you acted maliciously or recklessly in rendering emergency care to them. We’ll define “willful and wanton” later on in this lecture.
  – General Rule #2 – the protections of the Good Samaritan statute do not apply to physicians who decide to stop and render aid to a particular individual at a particular time with the expectation of being paid for the care they provide.
    • Example: A doctor is driving on the interstate and decides to stop to offer roadside assistance to a person in need. Before the doctor begins to render care, she says, “I’m only going to help you if you agree to pay me for my service.” The victim agrees. No protection for the physician under the Good Samaritan statute because she only rendered care in exchange for providing help.
  – General Rule #3 – the fact that professional firefighters and EMTs are compensated for their services does not strip them from the protections of the Good Samaritan Act. The fact that providing emergency services is an inherent part of your paid occupation does not mean that the decision to render aid to a particular person at a particular time was made with the expectation of remuneration.
Ohio Good Samaritan Act
Specific Cases


• **Facts:** A husband and wife pull into a gas station, pump gas into their car, and the car catches fire for an unexplained reason. One of the gas station attendants shuts down the pumps and brings the husband an inoperable fire extinguisher. Another gas station attendant pours two buckets of water on the burning floor mats of the vehicle, and another one dials 911 for help. Husband suffers burns in trying to put out the fire and sues the gas station for failing to provide sufficient assistance and a working fire extinguisher.

• **Issue:** Did the gas station attendants owe the husband a duty to provide a working fire extinguisher and provide additional assistance in controlling the fire?

• **Held:** No. “Plaintiffs have cited no authorities to establish that the gas station attendants acted outside the scope of their duty or have a legal obligation to assist in controlling emergencies *that were not of their own making*.”

• **Reasoning:** “It would only serve to discourage voluntary or statutorily-immunized Good Samaritan activities to impose liability for not successfully avoiding injury in such circumstances.”
Ohio Good Samaritan Act
Specific Cases

• *Butler v. Rejon*, No. 19699, 00-LW-0326 (Ohio Ct. App. 9th Dist. 2000).
• **Facts:** Husband and wife pull over on the side of Interstate 76 to see if an intoxicated driver needed help. Husband parked the car between the disabled vehicle and oncoming traffic, turned on his hazard lights, and then began directing traffic. Wife waits in car. While waiting for EMS to arrive on scene, another vehicle crashes into back of Husband and Wife’s vehicle, injuring Wife. Husband extricates Wife from their vehicle, and aggravates a pre-existing back injury in the process. Husband and Wife sue driver who hit them and his auto insurance company. Jury found in favor of Husband and Wife, but found that Husband was partially negligent in his rescue efforts by using his car as a barrier and by trying to direct traffic on an interstate highway.
• **Issue:** Does the Good Samaritan Act cover third parties?
• **Held:** No. The Good Samaritan Act only shields a Good Samaritan from civil liability in a lawsuit brought by the victim against the Good Samaritan. It does not shield a Good Samaritan from civil liability to third parties.
• **Reasoning:** Even though Husband was trying protect the disabled driver, he did not render emergency care or treatment to the negligent driver who rear-ended his vehicle, and thus could not use the Good Samaritan Act as a shield when the jury found that he was partially negligent in causing his own injuries.
Good Samaritan Act
Ohio cases

• *Primes v. Tyler*, 43 Ohio St.2d 195, 331 N.E.2d 773 (Ohio 1975).
• **Facts:** Mr. Primes and Mr. Tyler were in a weekend golf group together, and they used an informal carpool arrangement to get to the various courses at which they played. One weekend, Mr. Tyler picked up Mr. Primes at his house, and on the way to the golf course, he botched a turn at an intersection and crashed into a telephone pole, causing an injury to Mr. Primes, who sued Mr. Tyler for negligence.
• **Issue:** Is R.C. 4515.02 – the Ohio guest statute – constitutional?
• **Held:** No. Passengers can sue the negligent drivers of vehicles even if the passengers are invited guests of the driver.
• **Reasoning:** One of the guest statute’s statutory objectives is the promotion and preservation of hospitality. “The favored treatment accorded to Good Samaritans would appear to further a legitimate objective of providing emergency medical assistance to injured persons where delay might result in death or great bodily injury.”
Ohio Political Subdivision Tort Liability Act – Chapter 2744 of Ohio Revised Code

• Originally enacted in 1985 by Ohio General Assembly
• “Political Subdivision” – defined as “any body corporate and politic” responsible for governmental activities in a geographic area smaller than the state. Generally includes cities, villages, and townships.
• Provides a three-tiered analysis for determining when political subdivisions are immune from liability
• Doctrine of Sovereign Immunity – “the King can do no wrong”
• *Havelack v. Portage Homes, Inc.*, 2 Ohio St.3d 26 (Ohio 1982) – Ohio Supreme Court abolishes the sovereign immunity doctrine
Ohio Political Subdivision Tort Liability Act

- First Tier of Analysis – provides a general grant of immunity because “a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.” R.C. 2744.02(A)(1).
Ohio Political Subdivision Tort Liability Act

• Second Tier of Analysis – provides five exceptions to the general rule that political subdivisions are immune from liability in tort. R.C. 2744.02(B).
  1. Negligent operation of a motor vehicle within the scope of employment and authority. Defenses to this liability include:
     – Member of a police department operating a motor vehicle while responding to an emergency call and the operation does not constitute willful or wanton misconduct.
     – Member of a fire department or fire agency operating a motor vehicle while engaged in duty at a fire, proceeding towards a fire believed to be in progress, or answering an emergency alarm and the operation does not constitute willful or wanton misconduct.
     – Member of an emergency medical service owned or operated by a political subdivision operating a motor vehicle responding to a call for emergency care, with a valid commercial or driver’s license, and the operation does not constitute willful or wanton misconduct.
  2. Negligent performance of acts by their employees with respect to proprietary functions.
  3. Negligent failure to keep public roads in repair and negligent failure to remove obstructions from public roads (except with respect to bridges over which the subdivision is not responsible for maintenance and/or inspection).
  4. Negligence of employees that occurs within and is due to physical defects within buildings used in connection with the performance of a governmental function, including office buildings and courthouses, but not including jails or other detention facilities.
  5. Liability expressly imposed by a section of the Ohio Revised Code.
Ohio Political Subdivision Tort Liability Act

• Third Tier of Analysis – Immunity may be reinstated if a political subdivision can successfully assert one of the defenses to liability listed in R.C. 2744.03. The following defenses or immunities to establish non-liability with respect to governmental or proprietary functions:
  – ....R.C. 2744.03(A)(6)(b) – an employee is immune under all circumstances unless one of the following applies...
    • The employee’s acts or omissions are manifestly outside the scope of employment or responsibilities;
    • The employee’s acts or omissions were undertaken with malicious purpose, in bad faith, or in a wanton and reckless manner;
    • Liability is expressly imposed by another section of the Ohio Revised Code.
Ohio Political Subdivision Tort Liability Act

• Three-Tiered Analysis – Short Version
  – First Tier – “You’re not liable.”
  – Second Tier – “You are liable.”
  – Third Tier – “You’re not liable.”

• “What are governmental agencies, the general public, and now the courts to make of a section of the Ohio Revised Code that first says ‘you’re not liable,’ then says ‘you are liable,’ and then says ‘you’re not’?”
Ohio Political Subdivision Tort Liability Act – Cases

• Are **volunteer** firefighters considered “employees” of political subdivisions and protected by the immunity provisions of the Act?
  
  – Yes. “A volunteer firefighter who is a member of the fire department of a municipal corporation is a “fireman” within the meaning of R.C. 2744.01(B) and shall not be held personally liable for damages for injury or loss to persons or property while engaged in the operation of a motor vehicle in the performance of a governmental function.” *Dougherty v. Torrence*, 2 Ohio St.3d 69, 442 N.E.2d 1295, syllabus (Ohio 1982); *Erie Insurance Group v. Baum*, 83 Ohio Misc.2d 1, 677 N.E.2d 1266 (Ohio Mun. Ct. 1993); *Reyes v. Lochotzki*, 2006-Ohio-1404, at ¶ 9 (Ohio Ct. App. 6th Dist. 2006).
Ohio Political Subdivision Tort Liability Act

• What constitutes “willful or wanton misconduct” in operating an emergency response vehicle?
  – Exceeding the posted speed limit?
    • No. Exceeding the posted speed limit in an emergency vehicle does not constitute “willful or wanton misconduct.”
  – Blowing a stoplight, stop sign, or other negative right-of-way?
    • It depends. Did you have your emergency lights on? Did you use the siren and air horn? Did you slowly approach the intersection and look in both directions before you proceeded, or did you just blow through it without looking at all?
  – Driving in the opposite lane of traffic in responding to an emergency call?
    • It depends. How fast were you going? Did you have your emergency lights on? Did you use your siren and air horn to appropriately warn oncoming traffic? Did you exhaust other options before trying this?
Ohio Political Subdivision Liability Act – Specific Cases

- Facts: Police officer responded to a radio call about a domestic problem with his siren sounding and his lights flashing. He accelerated through a red traffic light and struck another vehicle broadside with his police cruiser. The vehicle’s occupant sustained significant injuries and sued the officer and her police department.
- Issue: Did the police officer’s driving constitute willful, wanton, or reckless conduct?
- Held: Maybe. It was a “real possibility.” Although the use of lights and a siren by a police officer on an emergency call is a significant factor on the issue of whether the police officer acted in a willful or wanton manner in responding to the emergency, it is but one factor and is to be considered in conjunction with all the other circumstances, e.g., his proceeding in excess of 75 mph in a 25 mph zone.
- Reasoning: The police officer, who was apparently inexperienced and untrained in emergency driving procedures, decided to give backup to another officer assigned to investigate a domestic dispute. He determined that the radio message about the domestic problem created an emergency, and he then proceeded at speeds in excess of 75 mph in a 25 mph zone. Additionally, the evidence revealed that the residential street was lined with trees which limited both visibility of approaching vehicles and the audibility of a siren. Although the police officer saw the traffic light at the intersection from two blocks away, by his own admission, he made no effort to slow down. At the time, the officer was 22 years old, had been on the force for about two months, and had received about two weeks of training for the position.
Ohio Political Subdivision Liability Act – Specific Cases


- **Facts:** Firefighter responding to a 911 emergency call in an engine entered an intersection in the opposing lane of traffic at 61 mph in a 35 mph zone and collided with another vehicle. Driver of other vehicle suffered injuries and brought a lawsuit. Columbus Fire Department had a rule that a vehicle operator should not travel more than 20 mph over the speed limit when in the wrong lane.

- **Issue:** Did the firefighter’s driving constitute willful, wanton, or reckless conduct?

- **Held:** Maybe. This is a question for a jury.

- **Reasoning:** Each case has to be evaluated on its own unique facts. Violation of an internal fire department driving policy is not per se determinative of willful and wanton misconduct, but it can be taken into consideration by a jury in determining what a reasonable speed is to protect the safety of all concerned.
Ohio Political Subdivision Liability Act – Specific Cases


- **Facts:** Firefighters responding to 911 emergency call in an engine T-boned a van occupied by a grandfather and his grandson. At time of the collision, engine was traveling at about 50 mph in a 35 mph zone. Both vehicle occupants perished, and family members brought a wrongful death claim against fire department and firefighters.

- **Issue:** Does the violation of a statute, ordinance, or departmental driving policy by a firefighter constitute willful, wanton, or reckless conduct *per se*?

- **Held:** No. The violation of a statute, ordinance, or departmental policy enacted for the safety of the public is not per se willful, wanton, or reckless conduct but may be some evidence relevant to determining the culpability of a course of conduct.

- **Reasoning:** Each case has to be evaluated on its own unique facts. Violation of an internal fire department driving policy is not per se determinative of willful and wanton misconduct, but it can be taken into consideration by a jury in determining what a reasonable speed is to protect the safety of all concerned.
Ohio Political Subdivision Liability Act – Specific Cases

- **Facts:** Volunteer firefighter responded to the fire station from his home in his personal vehicle to respond to a 911 emergency call. Firefighter drove in opposite lane of traffic to pass two vehicles in front of him in a legal passing zone and struck a vehicle turning left in front of him. Vehicle flipped onto its side and driver died two days later from injuries sustained in collision.
- **Issues:** Was the firefighter responding to an “emergency call”? Was the firefighter’s conduct “with malicious purpose, in bad faith, or in a wanton or reckless manner”?
- **Held:** Yes, and no.
- **Reasoning:** "Emergency call" means “a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.” R.C. 2744.01(A). No evidence existed that the volunteer firefighter operated his vehicle in a manner which was with a malicious purpose, in bad faith, or in a wanton or reckless manner, and no evidence existed that he operated his vehicle in violation of Elm Valley Joint Fire District’s policies and guidelines or in violation of any traffic laws.
Ohio Political Subdivision Liability Act – Specific Cases

- **Facts:** Assistant Fire Chief for the City of Geneva crashed into a pedestrian at an intersection while responding to a 911 emergency call. Pedestrian suffered significant injuries as a result of accident and sued Assistant Fire Chief and City of Geneva Fire Department.
- **Issue:** Did the Assistant Fire Chief’s operation of the vehicle constitutes willful, wanton, or reckless conduct?
- **Held:** Maybe. This is a question for a jury to decide.
- **Reasoning:** Assistant Fire Chief’s vehicle was not equipped with overhead lights or a siren. Fire department’s policy manual required vehicles without lights or sirens to comply with all state and local laws, including coming to a full stop at all stoplights and stop signs. Assistant Chief was traveling 51 mph in a 35 mph zone and in the opposing lane of traffic when collision occurred. Too many disputed issues of material fact in play for a judge to decide that the Assistant Chief and fire department were entitled to immunity.
Ohio Firefighter’s Rule

• Fireman’s Rule – An injured fireman may not recover from one whose only connection to the injury is that his negligence caused the fire. Because fires cannot be reasonably anticipated, the owner of private property is not generally liable to firefighters who enter the premises and are injured while performing their official duties. *Hack v. Gillespie*, 74 Ohio St.3d 362, 658 N.E.2d 1046 (Ohio 1996); *Held v. City of Rocky River*, 34 Ohio App.3d 35, 516 N.E.2d 1272 (Ohio Ct. App. 8th Dist. 1986).

• Exceptions – An owner or occupier of private property can be liable to a firefighter who enters premises and is injured in the performance of his or her job duties if...
  – The injury was caused by the owner’s or occupier’s willful or wanton misconduct or affirmative act of negligence.
  – The injury was a result of a hidden trap on the premises.
  – The injury was caused by the owner or occupier’s violation of a duty imposed by statute or ordinance enacted for the benefit of firefighters.
  – The owner or occupier was aware of the firefighter’s presence on the premises, but failed to warn them of any known, hidden danger. *Scheurer v. Trustees of Open Bible Church*, 175 Ohio St. 163, 192 N.E.2d 38, paragraph two of the syllabus (Ohio 1963).
The Importance of Documentation on Your Reports

• “If you don’t write it down, it didn’t happen.”
• Try to get an impartial and disinterested witness to sign your patient refusals.
• If you are involved in an accident while operating an emergency vehicle, gather witnesses and take statements from them. Write down everything you remember as soon as you get back to the station while the details are still fresh in your mind.
• Date and time-stamp your notes. Keep them in a safe place. Your notes will serve as exhibits and evidence later on if the matter goes to trial.
• Refuse to talk to any claims adjusters from insurance companies. They are not on your side. They are trying to get a statement from you in order to pin you down to a specific story. Their first priority is to limit the amount of money they have to pay out because this boosts their bottom line.
• If you feel it is necessary, contact an attorney.
The End

• Thanks for listening!
• Good luck, and be safe out there!