

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Second Appellate District

Case Name: *Holbrook, et al. v. Brandenburg, et al.*, 2009-Ohio-2320.

Decided: May 15, 2009

Issue(s): Sovereign Immunity and Municipal Liability

Summary of Opinion: Brandenburg purchased a house across the street from Holbrook. The home was constructed on what had been farmland, and water from above the Holbrook property drained through a ditch across Brandenburg's property. The builder of Brandenburg's home attempted to alleviate the drainage problem but was unsuccessful. Mr. Brandenburg was aware that the home was built in a runoff area.

Brandenburg asked Bethel Township to correct the drainage problem on at least two occasions but it refused. Thereafter, Brandenburg began to block the drainage pipes under the road with bags of trash causing the water to back up and flood the Holbrook property and home. Holbrook removed the blockage several times, but Brandenburg built an earthen dam, and, with permission from the Township, finally closed the culvert with concrete, cinder block, and steel. The dam caused flooding in the Holbrook home, and it has caused the foundation to sink.

Holbrook repeatedly complained to Bethel Township about the flooding, but his pleas were denied. Holbrook filed suit against Brandenburg and the Township alleging that the Township negligently maintained the pipes under the road and negligently and recklessly allowed Brandenburg to tamper with the drainage system. The Township moved for summary judgment claiming sovereign immunity. The trial court denied summary judgment and the Township appealed.

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The Second District Court of Appeals explained that R.C. § 2744.02(B) creates exceptions to the general grant of sovereign immunity from liability. The court acknowledged that the *construction* of a sewer system is a *governmental* function and sovereign immunity applies. However, the court reasoned that the *maintenance* of a sewer system is a *proprietary* function under R.C. § 2744.02(B)(2) and an exception to the general rule. The court referenced an Ohio Supreme Court opinion that held that a municipality was not obligated to construct or maintain a sewer, but when it did, it had a duty to keep it in working condition, and ensure that it did not damage private property.

Furthermore, the court held that the Township did not have a valid defense to this exception under R.C. § 2744.03 because questions of fact existed as to whether or not the Township's choice to ignore years of complaints constituted judgment or discretion, and if so, whether or not the alleged judgment was made in bad faith or recklessly pursuant to R.C. § 2744.03(A)(5).

The judgment of the trial court was affirmed.

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