

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: First Appellate District

Case Name: *Whitley v. Progressive Preferred Ins. Co.*, 2009-Ohio-6933

Decided: December 31, 2009

Issue(s): Sovereign Immunity

Summary of Opinion: Jeffrey and Lora Whitley were seriously injured when the motorcycle they were riding collided with the police cruiser of Hamilton County Sheriff's Deputy Larry Henderson. While responding to an emergency dispatch, Henderson had entered the intersection that was the scene of the accident with his emergency lights on, but he had failed to turn on his siren. Additionally, Henderson entered the intersection against a red light while traveling at a speed of approximately 25 m.p.h.

Subsequently, the Whitleys filed separate suits against Hamilton County and numerous other defendants, including Deputy Henderson individually. The two cases were later consolidated. The trial court granted Hamilton County's motion for summary judgment because the County was immune from liability under the doctrine of sovereign immunity. The Whitleys appealed.

The First District Court of Appeals explained that R.C. § 2744 *et seq.* renders a governmental employee immune from liability for any actions performed in connection with a governmental or proprietary function, unless the employee exercised willful and wanton misconduct. Moreover, although Deputy Henderson did not have his siren turned on at the time of the collision, in apparent violation of R.C. § 4511.041, the court determined that his failure to comply with the requirements of that statute while responding to an emergency call was not on its face willful and wanton misconduct. On the contrary, his failure to turn

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on his siren was merely a factor the court must consider in determining whether his conduct was willful and wanton.

As a result, the court determined that although Deputy Henderson's conduct may have been negligent, it did not rise to the level of willful and wanton as a matter of law. The record did not indicate that he failed to exercise any duty of care he owed to other motorists, or that he had an intent not to perform such a duty. In conclusion, the court held that both the County and Henderson individually were immune from liability.

The judgment was affirmed.

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