

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**



“Appellants”) appeal from the trial court’s denial of their motion to dismiss. For the following reasons, the appeal is dismissed for lack of a final, appealable order.

I. Factual and Procedural History

{¶ 2} On May 7, 2025, plaintiffs-appellees Ameer Alkayali, Weilin Fang, and Kevin Kennelly (collectively, “Appellees”) filed a complaint against Appellants related to a May 7, 2024 incident that took place on CWRU’s campus in Cleveland, Ohio.¹ The complaint alleged that on May 7, 2024, Appellees protested the painting over of a mural and a wall known as “the Spirit Wall” to cover pro-Palestine messages. The complaint alleged that CWRU police officers “stood by as [painters], under contract with CWRU, prepared to paint over the mural.” The complaint further alleged that the painters proceeded to paint directly over Appellees while under the direct supervision of Appellants and following an order from Appellant Drumm. Appellees brought claims of civil assault and battery based on respondeat superior.

{¶ 3} Appellees filed an amended complaint on May 14, 2025, and on July 28, 2025, Appellants filed a motion to dismiss pursuant to Civ.R. 12(B)(6). The motion to dismiss argued that Appellants are entitled to immunity under R.C. Ch. 2744. On September 4, 2025, Appellees filed a brief in opposition to the motion to dismiss, and Appellants subsequently filed a reply brief in support of their motion to dismiss.

¹ In addition to the Appellants identified above, Appellees named a painting company and its employees as defendants; only the Appellants identified above are relevant to this appeal.

{¶ 4} On November 18, 2025, the trial court denied the motion to dismiss, stating that it found “that there exists a potential set of facts that may entitle plaintiff[s] to relief, therefore making dismissal at this stage premature.”

{¶ 5} Appellants timely appealed and raise a single assignment of error for our review:

The trial court erred by failing to grant statutory immunity pursuant to R.C. 2744 and by denying Case Western Reserve University and CWRU-employed Police Officers’ motion to dismiss.

II. Law and Analysis

{¶ 6} In their sole assignment of error, Appellants argue that the trial court erred in denying their motion to dismiss because they are entitled to political-subdivision immunity pursuant to R.C. 2744.02(A)(1).

{¶ 7} R.C. 2744.02(C) characterizes “[a]n order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.” Ohio Const. art. IV, § 3(B)(2) gives this court power to review only “final” orders. Here, whether this order was final and appealable turns on whether CWRU is a political subdivision subject to immunity under R.C. Ch. 2744. Therefore, for this court to retain jurisdiction over this appeal, a threshold question must be determined first: whether CWRU is a political subdivision for purposes of R.C. Ch. 2744.

{¶ 8} R.C. 2744.01(F) defines political subdivision as “a municipal corporation, township, school district, or other body corporate and politic

responsible for governmental activities in a geographic area smaller than that of the state.” The statute goes on to list approximately 19 types of entities, such as a county hospital commission, a regional planning commission, and a joint interstate emergency planning district, that are examples of political subdivisions entitled to statutory immunity. Appellant CWRU is not a municipal corporation, township, or school district, nor is it encompassed by any of the example entities listed in R.C. 2744.01(F); thus, the question for resolution is whether CWRU is some “other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.”

{¶ 9} CWRU is a private university as defined in R.C. 1713.50. Therefore, it “is not owned or controlled by the state or any political subdivision of the state.” R.C. 1713.50(A)(2)(a). Pursuant to R.C. 1713.50, CWRU has established and maintains a police department. Specifically, R.C. 1713.50(B) provides that “the board of trustees of a private college or university may establish a campus police department and appoint members of the campus police department to act as police officers.” Further, “only those persons who have successfully completed a training program approved by the Ohio peace officer training commission” and been so certified shall be appointed as members of the campus police department. Additionally, Cleveland Division of Police General Police Order 4.03.04 provides that CWRU police officers “have the same authority as [Cleveland Division of Police] officers” on CWRU property and “within the jurisdiction of the City of Cleveland, en route to or from [CWRU] property” under exigent circumstances.

{¶ 10} Appellants point to case law holding that a campus police department is a “public office” in the context of a public records request as support for their position that Appellants are a political subdivision and employees thereof. Specifically, the Ohio Supreme Court determined that the Otterbein University police department was a public office for purposes of R.C. 149.43, Ohio’s Public Records Act. *State ex rel. Schiffbauer v. Banaszak*, 2015-Ohio-1854, ¶ 2. The Court found that the police department was a public office because it was an “organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government” because it exercises “the basic police power of enforcing laws and maintaining the peace within its jurisdiction” and further it was established by the laws of the state “because it exists only through R.C. 1713.50.” *Id.* at ¶ 9. Moreover, the Ohio Supreme Court specifically held that the mere fact that Otterbein is a private institution does not preclude its police department from being construed as a public office for purposes of the Public Records Act. *Id.* at ¶ 12. Appellants assert that it is irrelevant here that CWRU itself is not a governmental entity, because it was a “body politic” maintaining a police department and therefore engaged in a governmental function.

{¶ 11} Appellees, however, point to reasoning expressed by another district court in Ohio stating that in determining whether an entity is a political subdivision entitled to immunity, “[p]ublic control of the entity . . . is central to the determination that the entity is a component of government and entitled to

sovereign immunity.” *Weber v. Oriana House*, 1995 Ohio App. LEXIS 4763, *12 (9th Dist. Oct. 25, 1995), citing *Poole v. Inlow*, 80 Ohio App.3d 379 (12th Dist. 1992).

{¶ 12} The public-private distinction has been utilized by the Ohio Supreme Court in the context of political-subdivision immunity. In interpreting the R.C. 2744.01(F) definition of political subdivisions, the Ohio Supreme Court has looked to the definition of the term “body politic,” noting that

Black’s Law Dictionary (7 Ed. 1999) 167, defines “body politic” as “[a] group of people regarded in a political (rather than private) sense and organized under a single governmental authority.”

Greene Cty. Agricultural Soc. v. Liming, 89 Ohio St.3d 551, 555 (2000).

{¶ 13} At least one additional district court has based its determination of whether an entity is a political subdivision on its public or private nature. Relying on the Ohio Supreme Court’s decision in *Greene*, the Sixth District Court of Appeals held that the definition of “body corporate and politic” used in *Greene* “underscores the public as opposed to private nature of an entity” and therefore determined that a charter school management company was a private, for-profit corporation, rather than a political organization or public corporation and was not immune to tort claims under R.C. 2744.01 et seq. *Cunningham v. Star Academy of Toledo*, 2014-Ohio-428, ¶ 17 (6th Dist.).

{¶ 14} While Appellees are correct that public or private control of an entity in question is a relevant factor to consider in determining whether the entity is a political subdivision, this is not the sole dispositive factor. Thus, the fact that CWRU is a private university, alone, does not necessarily preclude it from being a political

subdivision. However, the fact that CWRU has established a police department, alone, does not necessarily make it a political subdivision.

{¶ 15} In holding that a private university's police department was a "public office" for purposes of Ohio's Public Records Act, the Ohio Supreme Court noted that the police department was established by the laws of the state "because it exists only through R.C. 1713.50." R.C. 1713.50, the very statute that authorizes the creation of CWRU's police department, contains a clear distinction between a political subdivision and a private college or university. R.C. 1713.50(A)(1) defines "political subdivision" as "a county, municipal corporation, or township." R.C. 1713.50(A)(2) defines "private college or university" as

a college or university that has all of the following characteristics:

(a) It is not owned or controlled by the state or any political subdivision of the state.

(b) It provides a program of education in residence leading to a baccalaureate degree or provides a program of education in residence, for which the baccalaureate degree is a prerequisite, leading to an academic or professional degree.

(c) It is accredited by the north central association or another nationally recognized agency that accredits colleges and universities.

{¶ 16} The statute then goes on to repeatedly distinguish between "members of a campus police department" and "law enforcement officers of the political subdivisions in which the private college or university in which the private college or university is located." When interpreting a statute, "[n]o part [of the statute] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or

inoperative.” *State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 2012-Ohio-1484, ¶ 19, citing *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373 (1917). Thus, R.C. 1713.50 should not be interpreted in such a way as to eliminate the apparent distinction between private university police departments and political subdivisions. This conclusion is not necessarily at odds with the Ohio Supreme Court’s position that private university police departments are “public offices” for purposes of Ohio’s Public Records Act because “public offices” are not mentioned in R.C. 1713.50 and, therefore, there is no clear statutory exclusion of private university police departments from “public offices.”

{¶ 17} Further, the fact that CWRU has a police department does not transform it from a private institution into a political subdivision. R.C. 2744.01(F) lists numerous entities that qualify for immunity as political subdivisions, and private universities are not enumerated on that list. A holding here that CWRU is a political subdivision merely by virtue of the fact that it maintains a police department would mean that every private university in the state of Ohio that likewise maintains a statutorily authorized police department would also be a political subdivision, and the legislature doubtfully intended this in enacting either R.C. Ch. 2744 or R.C. 1713.50.

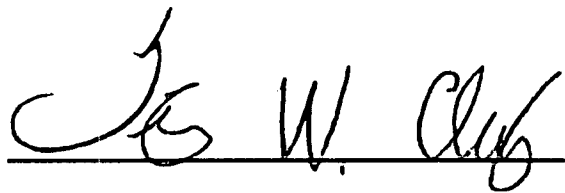
{¶ 18} Having concluded that CWRU is not a political subdivision for purposes of Ohio’s Political Subdivision Tort Liability Act, the trial court’s denial of CWRU’s motion to dismiss was not an order that denied a political subdivision the

benefit of an alleged immunity from liability as provided in R.C. Ch. 2744. As such, the trial court's order denying CWRU's motion to dismiss was not a final, appealable order.

{¶ 19} Accordingly, the appeal is dismissed.

It is ordered that appellees recover from appellants costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



TIMOTHY W. CLARY, JUDGE

Filed and Journalized
Per App.R. 22(C)

OCT 15 2026

Cuyahoga County Clerk
Of the Court of Appeals

By J-GB Deputy

MARY J. BOYLE, P.J., CONCURS IN JUDGMENT ONLY (WITH A SEPARATE OPINION);

KATHLEEN ANN KEOUGH, J., DISSENTS (WITH SEPARATE OPINION)

MARY J. BOYLE, P.J., CONCURRING IN JUDGMENT ONLY:

{¶ 20} Respectfully, I concur in judgment only. I agree with the lead opinion that the trial court's order denying CWRU's motion to dismiss is not a final, appealable order. Where I diverge from the lead opinion, however, is its conclusion that "a threshold question must be determined first: whether CWRU is a political subdivision for purposes of R.C. Ch. 2744." I do not agree that we should make this determination because in doing so, we would be making it for the first time on appeal.

{¶ 21} In this case, the trial court denied CWRU's motion to dismiss, finding "there exists a potential set of facts that may entitle plaintiff to relief, therefore making dismissal at this stage premature." (Journal entry, Nov. 18, 2025.) The trial court's denial did not find that CWRU was a political subdivision or that political-subdivision immunity applies. I recognize that findings of fact and conclusions of law are not required when a trial court rules on a Civ.R. 12(B)(6) motion to dismiss. In a case such as this, however, which essentially requires this court to act in the place of the trial court in order to determine the arguments on appeal, I would not speculate as to what the trial court meant in its journal entry regarding whether CWRU is a political subdivision entitled to immunity.

{¶ 22} We must be mindful that this court's function is that of a reviewing court and "[w]hen there is no determination before us to review, this Court cannot step into the role of the trial court and determine a matter for the first time on appeal." *Molnar v. Green*, 2018-Ohio-1168, ¶ 5 (9th Dist.), citing *Baab v. Medina City Schools Bd. of Edn.*, 2015-Ohio-5315, ¶ 5 (9th Dist.). Under R.C. 2744.02(C), "[a]n order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order[,]" which provides the political subdivision with the right to an interlocutory appeal. See *Hubbell v. Xenia*, 2007-Ohio-4839, ¶ 12. Because there was no determination by the trial court that CWRU is entitled to political-subdivision immunity, I would find that this appeal is interlocutory and dismiss for lack of final appealable order.

KATHLEEN ANN KEOUGH, J., DISSENTING:

{¶ 23} I respectfully dissent. The issue regarding whether the CWRU police are a political subdivision was properly raised in the trial court, fully briefed within the motion to dismiss, and is properly before this court. Even though the trial court did not directly address the immunity issue, I would have affirmed the decision of the trial court rather than dismissed it. I would have found as a matter of law that CWRU's campus police department is a political subdivision for purposes of R.C. 2744.02. Determining whether the CWRU campus police department is a political subdivision under the immunity statute is a prerequisite to our jurisdiction to hear this matter and therefore must be determined.

{¶ 24} R.C. 2744.02(C) characterizes "[a]n order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in Chapter 2744. or any other provision of the law is a final order." Article IV, § 3(B)(2) gives our court power to review only "final" decisions. Here, whether this order was final and appealable turns on whether the CWRU campus police department is a political subdivision subject to the R.C. Ch. 2744 immunity framework.

{¶ 25} For purposes of the immunity statute, "political subdivision" is relevantly defined as a "body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." R.C. 2744.01(F). It is undisputed that the CWRU campus police are organized "in a geographic area

smaller than that of the state” so the only issue is whether the CWRU police department is a “body corporate and politic responsible for governmental activities.”

{¶ 26} A court first determines whether the CWRU police are “responsible for government activities.” Because a private campus police department, especially on a metropolitan campus, toes the line between serving both private and public interests, it is not readily apparent whether the CWRU police are “responsible for government activities.”

{¶ 27} Several distinct factors persuade me that CWRU is “responsible for government activities.” First, the power of a private college to organize a private campus police department and the powers of that department are solely granted by R.C. 1713.50, which was enacted by the General Assembly, a governmental branch of the state. Specifically, the General Assembly provided that campus police departments have authority “only on the property of the private college or university that employs them” but that authority includes “the same powers and authority that are vested in a police officer of a municipal corporation or a county sheriff” — jobs that are typically considered government activities. R.C. 1713.50(C).

{¶ 28} Second, CWRU campus police officers are required to complete a program approved by the Ohio peace officer training commission, which the Ohio Administrative Code mandates for “every peace officer and trooper” in the state. Adm.Code 109:2-18-02. This indicates that the CWRU police are trained in the same manner that governmental actors are and are trained to further the interests of the state.

{¶ 29} Third, and perhaps most persuasive to this analysis is that the City of Cleveland has expanded the scope of the CWRU police department's authority to include "all of the same authority as Cleveland police officers when on CWRU property" and when they are "within the jurisdiction of the City of Cleveland, en route to or from [CWRU's] property" under exigent circumstances. Cleveland Division of Police General Police Order 4.03.04. Under this order, the CWRU police are granted powers typically viewed as a government activity, but especially so when considering that in limited circumstances, CWRU officers serve the same function as Cleveland police officers *off of CWRU's campus*.

{¶ 30} And, relevant here, this court has previously noted that "R.C. 2744.01(C) does not exclude from the definition of governmental functions those functions sometimes performed by private entities for political subdivisions."² In fact, many of the specifically enumerated governmental functions set forth in R.C. 2744.01(C)(1) are commonly performed by private entities for political subdivisions." *Lyons v. Teamhealth Midwest Cleveland*, 2011-Ohio-5501, ¶ 46 (8th

² While "government activities" are not specifically defined in R.C. 2744.01, "governmental function" is defined. Assuming without deciding that "government functions" and "government activities" are one in the same for purposes of the immunity statute, I am persuaded by the fact that "governmental function" has several statutory definitions that square perfectly with the CWRU campus police department and its obligations, such as R.C. 2744.01(C)(1)(b) ("A function that is for the common good of all citizens of the state"); R.C. 2744.01(C)(1)(c) ("A function that promotes or preserves the public peace, health, safety, or welfare . . . that are not engaged in or not customarily engaged in by nongovernmental persons"); R.C. 2744.01(C)(2)(a) ("The provision . . . of police . . . or protection"); R.C. 2744.01(C)(2)(b) ("The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages"); R.C. 2744.01(C)(2)(i) ("The enforcement . . . of any law"); and R.C. 2744.01(C)(2)(j) ("The regulation of traffic").

Dist.), quoting *McCloud v. Nimmer*, 595 N.E.2d 492 (8th Dist. 1991). In *Nimmer*, 595 N.E.2d 492 (8th Dist. 1991), we found that “[s]ince police services are specifically defined as a governmental function, what entity actually performs them or a part of them on behalf of a political subdivision has no bearing on their status as governmental pursuant to R.C. 2744.01(C)(1).”

{¶ 31} Based on the foregoing and considering the CWRU police department’s function in its totality, I would find that the CWRU police are “responsible for government activities” for purposes of immunity.

{¶ 32} The next determination is whether the CWRU police are considered a “body corporate and politic.” In 1936, the Ohio Supreme Court grappled with the definition of a “body politic.” It stated that a “body politic” is “simply a group or body of citizens organized for the purpose of exercising governmental functions. Such group may be large or small, and it may be a group within a group.” *McKee v. Univ. Circle, Inc.*, 2015-Ohio-2953, ¶ 44 (8th Dist.), quoting *Uricich v. Kolesar*, 132 Ohio St. 115, 118 (1936). In 1989, the Ohio Supreme Court clarified that “[a] body corporate and politic is a governmental body or public corporation having powers and duties of government. . . . [It is] created by the state for political purposes and to act as an agency in the administration of civil government” *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St. 3d 147, 150 (1989). Then, in 2000, the Ohio Supreme Court pulled the definition of “body politic” from *Black’s Law Dictionary* 167 (7th Ed. 1999) as “[a] group of people regarded in a political (rather than private) sense and organized

under a single governmental authority.” *McKee* at ¶ 45, quoting *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 555 (2000).

{¶ 33} The CWRU campus police fit all of the aforementioned definitions. Even though it serves a private college, the ability of CWRU’s police to maintain a police department with full police power is specifically granted and designated by the General Assembly. And, as already discussed, the CWRU police officers’ authority extends even further than on CWRU’s campus to actual areas of the City of Cleveland. There is no question that the CWRU police department serves the private interests of CWRU, but unlike a private security team, their power and function are specifically derived from the state and is instructed under a state-vetted training program that police officers all over the state follow. I also recognize that in serving the interests of CWRU’s campus, CWRU’s police are concurrently serving the public given CWRU’s metropolitan location and the Cleveland police’s recognition; preserving the peace at CWRU is equally in the City of Cleveland’s best interest.

{¶ 34} Having found that the CWRU police are a political subdivision for purposes of the political-subdivision-immunity statute, I review the three-tiered analysis that the Ohio Supreme Court has dictated for when it is undisputed that the defendant is a political subdivision according to *Greene Cty.*

{¶ 35} The first tier is a general proposition: a political subdivision is immune from liability incurred in performing a governmental or proprietary function. *Id.* at 556-557. This immunity is not absolute, and the second tier requires

the court to determine whether any of the five exceptions to immunity in R.C. 2744.02(B) apply. The complaint is vague in this respect. Assuming that all factual allegations within the complaint are true, it is not clear from the four corners of the complaint that the CWRU campus police department and its officers' conduct was within one of these recognized exceptions, and a question of fact for informing that determination remains. Having found that a question of fact remains at the second tier, it is not necessary to examine the third tier containing defenses to immunity. *See, e.g., Nelson v. Cleveland*, 2013-Ohio-493, ¶ 14 (finding that the court need not engage in the third tier of the analysis if none of the statutory sections apply).

{¶ 36} From the pleadings alone, I would find that CWRU's campus police department is a political subdivision for purposes of the immunity statute under R.C. 2744.02. However, a question of fact remains as to whether any of the exceptions or defenses to immunity apply. I would therefore affirm the judgment of the trial court denying the CWRU police department's motion to dismiss.