COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

TYLER LAWRENCE	:	
Plaintiff	:	**CASE NO. 2014 CVH 00615**
vs.	:	**Judge McBride**
BETHEL-TATE LOCAL SCHOOL DISTRICT aka BETHEL-TATE LOCAL SCHOOLS, et al.,	:	**DECISION/ENTRY**
Defendants	:	

Lindhorst & Dreidame Co., LPA, Barry F. Fagel, counsel for the plaintiff Tyler Lawrence, 312 Walnut Street, Suite 3100, Cincinnati, Ohio 45202.

McGowan & Markling Co., L.P.A., Matthew John Markling and Sean Koran, counsel for the defendants Bethel-Tate Local School District aka Bethel-Tata Local Schools and Bethel-Tate School District Board of Education, 1894 North Cleveland-Massillon Road, Akron, Ohio 44333.

This cause is before the court for consideration of a motion for judgment on the pleadings filed by the defendants Bethel-Tate Local School District Board of Education and Bethel-Tate Local School District aka Bethel-Tate Local Schools.

The court scheduled and held a hearing on the motion for judgment on the pleadings on November 7, 2014. At the conclusion of that hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

At the hearing on this matter, counsel for the defendants indicated that the present motion should be applied to the amended complaint filed on November 6, 2014 and, as such, the court will use the amended complaint for its analysis of the motion for judgment on the pleadings.

On or about May 8, 2012, the plaintiff Tyler Lawrence was participating as an athlete in an interscholastic track meet on the premises of Bethel-Tate High School in Clermont County, Ohio.[1] According to the amended complaint, "[o]ne of the purposes of the track meet was to promote or preserve public health, welfare and peace."[2] While participating in the long jump portion of the track meet, the plaintiff alleges that he stepped on a dangerous and hazardous board which caused him to fall and suffer severe injuries.[3]

[1] Plaintiff Tyler Lawrence's Amended Complaint at ¶ 1.
[2] Id. at ¶ 4.
[3] Id. at ¶ 5.

STANDARD OF REVIEW

Pursuant to Civ.R. 12(C), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

"Judgment on the pleadings is appropriate under Civ.R. 12(C) 'where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.' "[4] "Furthermore, in ruling on a Civ.R. 12(C) motion, a court is 'limited solely to the allegations in the pleadings and any writings attached to the pleadings.' "[5]

LEGAL ANALYSIS

The court would note at the outset that the defendants have withdrawn their R.C. 2744 statutory immunity argument for the purposes of the present motion.[6] As such, the only immunity argument to be analyzed by the court with regard to the present motion is under the recreational user statute.

R.C. 1533.181 provides as follows:

> "(A) No owner, lessee, or occupant of premises:
>
> (1) Owes any duty to a recreational user to keep the premises safe for entry or use;

[4] *J.H. v. Hamilton City School Dist.*, 12th Dist. Butler No. CA2012-11-236, 2013-Ohio-2967, ¶ 8, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996).
[5] Id., quoting *Golden v. Milford Exempted Village School Bd. of Edn.*, 12th Dist. Clermont No. CA2008-10-097, 2009-Ohio-3418, ¶ 6.
[6] Defendants' Reply to Plaintiffs' Sur-Reply to Defendants' Motion for Judgment on the Pleadings at pg. 6.

> (2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;
>
> (3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user.
>
> (B) Division (A) of this section applies to the owner, lessee, or occupant of privately owned, nonresidential premises, whether or not the premises are kept open for public use and whether or not the owner, lessee, or occupant denies entry to certain individuals."

R.C. 1533.18(A) defines "premises" as "all privately owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon."

R.C. 1533.18(B) defines "recreational user" as "a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, or swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits."

The defendants move the court to dismiss Bethel-Tate Local School District as a party in this case under the theory that the school district is not an entity capable of being sued. R.C. 3313.17 provides that "[t]he board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued * * *." While some courts have held that a board of education must be sued in legal actions

involving schools, other courts have found that "for purposes of political subdivision tort liability under R.C. Chapter 2744, a school district, because it is a political subdivision pursuant to R.C. 2744.01(F), is subject to being sued."[7] The court will find for the purposes of this motion that the plaintiff is not precluded from suing the Bethel-Tate Local School District but the court may revisit this issue on summary judgment if requested to do so.

The plaintiff argues that R.C. 1533.181 cannot apply in the present case because the property at issue is not privately-owned or state-owned land. However, Ohio case law has clearly established that R.C. 1533.181 is to be construed as being applicable to incidents occurring on school district property.[8] As a result, the court finds that R.C. 1533.181 is applicable to the incident at issue which occurred on school district property.

The Ohio Supreme Court has held that when "determining whether a person is a recreational user under R.C. 1533.18(B), the analysis should focus on the character of the property upon which the injury occurs and the type of activities for which the property is held open to the public."[9]

In 1995, the recreational user statute was revised to no longer require that the property at issue be kept open for public use.[10] As noted above, R.C. 1533.181(B) now

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[7] *Carney v. Cleveland Hts.-Univ. Hts. City School Dist.*, 143 Ohio App.3d 415, 424, 758 N.E.2d 234 (8th Dist.,2001), citing, e.g., *Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 706 N.E.2d 1261 (1999); and *Jones v. Huntington Local School Dist.*, 4th Dist. Ross No. 00CA2548, 2001 WL 243293.

[8] See, *Mason v. Bristol Local School Dist. Bd. of Edn.*, 11th Dist. Trumbull No. 2005-T-0067, 2006-Ohio-5174, ¶ 56, citing *LiCause v. Canton*, 42 Ohio St.3d 109, 110, 537 N.E.2d 1298 (1989); *Fuehrer v. Westerville City School Dist.*, 61 Ohio St.3d 201, 203, 574 N.E.2d 488 (1991), citing *Johnson v. New London*, 36 Ohio St.3d 60, 521 N.E.2d 793 (1988). See, also, *Roberts v. Switzerland of Ohio Local School Dist.*, 2014-Ohio-78, 7 N.E.3d 526, ¶ 36 (7th Dist.).

[9] *Miller v. City of Dayton*, 42 Ohio St.3d 113, 537 N.E.2d 1294 (1989), paragraph one of the syllabus.

[10] *Roberts*, supra, 2014-Ohio-78 at ¶ 39, quoting *Stiner v. Dechant*, 114 Ohio App.3d 209, 214, 683 N.E.2d 26 (9th Dist.,1996).

states that the statute applies "whether or not the premises are kept open for public use."

However, as recently as 2013 in the case of *Pauley v. Circleville*, 137 Ohio St.3d 212, 2013-Ohio-4541, 998 N.E.2d 1083, (2013), the Ohio Supreme Court has continued to hold that courts must "examine the essential character of the property" to determine whether recreational user immunity applies.[11] In fact, the Ohio Supreme Court still stated in *Pauley* that "the property must be held open to the public for recreational use, free of charge."[12] The court noted that " '[t]o qualify for recreational user immunity, property need not be completely natural, but its essential character should fit within the intent of the statute.'"[13] The Court engaged in a comprehensive discussion of the character of the property at issue, which in *Pauley* was a city park, and determined that summary judgment had been properly granted due to the fact that the recreational user statute applied when the plaintiff was injured while sledding in the subject city park.[14]

Since the character of the property at issue must still be examined by courts when determining whether the recreational user statute applies, this creates a problem for courts attempting to analyze this issue under a motion to dismiss or motion for judgment on the pleadings standard, which restricts the court's factual analysis to those facts set forth within the four corners of the complaint.

In the case of *Mason v. Bristol Local School Dist. Bd. of Edn.*, supra, the plaintiff was a student athlete participating in a track and field competition when she was injured

[11] *Pauley v. Circleville*, 137 Ohio St.3d 212, 2013-Ohio-4541, 998 N.E.2d 1083, ¶ 16 (2013).
[12] Id.
[13] Id. at ¶ 18, quoting *Miller*, supra, 42 Ohio St.3d at 114.
[14] Id. at ¶¶ 16-39.

by a discus thrown by another competitor.[15] The plaintiff alleged that her injury was due, in part, to the negligent construction, design and maintenance of the discus pit.[16] The court found that the recreational user statute applied and that the board of education was entitled to immunity under said statute.[17]

While the *Mason* case appears to be somewhat similar to the case at bar, this court is faced with the same problem as the court in *Roberts v. Switzerland of Ohio Local School Dist.*, 2014-Ohio-78, 7 N.E.3d 526, (7th Dist.) In that case, the court noted that, while *Mason* appeared to be factually similar, there was one notable distinction – *Mason* was decided on summary judgment while the motion before the *Roberts* court was a motion to dismiss under Civ.R. 12(B)(6).[18] The court noted that evidence had yet to be developed in the case as to whether the plaintiff was a recreational user and as to the character of the school property.[19]

Likewise, in the case at bar, evidence has yet to be developed in this case that would enable this court to engage in an analysis of the character of the property at issue and the plaintiff's potential status as a recreational user. The facts set forth in the amended complaint regarding the property at issue are insufficient to permit the court to effectively determine whether the statute at issue applies in the case at bar. As such, the motion for judgment on the pleadings must be denied.

[15] *Mason*, supra, 2006-Ohio-5174 at ¶¶ 3 and 12.
[16] Id. at ¶ 63.
[17] Id.
[18] *Roberts*, supra, 2014-Ohio-78 at ¶ 38.
[19] Id. at ¶¶ 38-40.

CONCLUSION

The defendants' motion for judgment on the pleadings is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Entry were sent on this _____ day of _____, 20 ____ via e-mail to Barry Fagel, attorney for plaintiff, Tyler Lawrence, at bfagel@lindhorstlaw.com, and to Samuel T. O'Leary, at soleary@mcgownmarkling.com, Matthew J. Markling, at mmarkling@mcgownmarkling.com, and to Sean Koran, at skoran@mcgownmarkling.com, attorneys for defendants Bethel Tate Local School District and Bethel Tate Local School District Board of Education.

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Administrative Assistant to Judge McBride