

Ohio Law Upholds Limits on Injured Worker Suits

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***Kaminski*: The Final Word on Ohio's Employer Intentional Tort Law**

In a 6-1 decision issued March 23, 2010, the Ohio Supreme Court ruled in *Kaminski v. Metal & Wire Prods. Co.*, Slip Opinion No. 2010-Ohio-1027, that Ohio's employer intentional tort statute in R.C. 2745.01 is constitutional, and reinstated summary judgment in favor of the employer. After two prior unsuccessful attempts by the Ohio General Assembly to enact a statute limiting the scope of the employer intentional tort, the Supreme Court is finally satisfied that the third time is the charm.

In *Kaminski*, a press operator was injured in the course of her employment at the defendant employer. The employee applied for and received workers' compensation benefits. About two months after the accident, the employee filed suit alleging her employer committed an employer intentional tort under R.C. 2745.01. The trial court granted the employer's motion for summary judgment on the plaintiff's complaint and on the employer's counterclaim (seeking a declaratory judgment that R.C. 2745.01 is constitutional). The employee appealed.

On appeal, the 7th District Court of Appeals (Columbiana County) held that R.C. 2745.01 was unconstitutional in its entirety, relying on *Johnson v. BP Chems., Inc.* (1999), 85 Ohio St.3d 298, which struck an earlier employer intentional tort statute as unconstitutional in light of Sections 34 and 35, Article II of the Ohio Constitution. The appeals court remanded the cause back to the trial court as it also decided the employee presented sufficient evidence under the common law test for an employer intentional tort. The employer appealed.

The Supreme Court concluded, after detailing the historical development of employer intentional tort law in Ohio – both common law and intentional tort legislation – that “although Sections 34 and 35 do not specifically authorize legislation in the area of employer intentional torts, those sections do not limit the General Assembly's power to legislate in the area” and further, that the employer intentional tort statute should be upheld if it does not violate any other constitutional provision. The Supreme Court acknowledged that the General Assembly's intent in enacting R.C. 2745.01 (effective April 7, 2005) was to permit recovery for employer intentional tort only when an employer acts with specific intent to cause injury. This was a significant departure from the common law test articulated by the Supreme Court in *Fyffe v. Jenos, Inc.* (1991), 59 Ohio St.3d 115.

According to the Court, Section 34 did not limit the General Assembly's authority to legislate as to the employer intentional tort, so the statute did not violate Section 34. The statute did not violate Section 35 since the General Assembly's authority to legislate outside this workers' compensation arena was not restricted. And the statute did not alter the employee's and employer's rights and obligations under the state workers' compensation system. The Court acknowledged difficulty squaring its decision with the Court's 1999 decision in *Johnson* which struck down as unconstitutional a prior version of R.C. 2745.01. Rather than overrule *Johnson*, the majority simply limited its ruling to the facts of that case so it would have no impact on *Kaminski* or subsequent cases before the Court. Because the current employer intentional tort

statute differs in key aspects to the earlier statute considered in *Johnson*, the Court limited the reach of *Johnson* to the particular statute considered at the time.

As additional justification for its holding, the Court noted the statute constrains rather than abolishes the cause of action for an employer intentional tort. The Court also noted that the statute harmonizes Ohio's law with the law in a "clear majority of states." And the statute did not violate any other constitutional provision considered in the *Stetter* decision issued the same day (discussed below).

Stetter v. R.J. Corman Derailment Servs. LLC

In *Stetter v. R.J. Corman Derailment Servs. LLC*, Slip Opinion No. 2010-Ohio-1029, a companion case to *Kaminski*, the Ohio Supreme Court was asked by the United States District Court for the Northern District of Ohio, to respond to eight questions of state law regarding the constitutionality of the employer intentional tort statute, R.C. 2745.01. The Court determined in each instance that the statute did not run afoul of the Ohio Constitution.

1. R.C. 2745.01 does not eliminate the common-law cause of action for an employer intentional tort. Although the statute significantly limits lawsuits for employer intentional torts, it does not abolish the tort completely.
2. R.C. 2745.01 does not conflict with the legislative authority granted to the Ohio General Assembly by Sections 34 and 35, Article II of the Ohio Constitution for the reasons articulated in *Kaminski*.
3. R.C. 2745.01 does not violate the right to an open court or the right to a remedy because: the statute is not retroactive and has no effect on employees whose causes of action arose before the statute's effective date; the statute still allows employees to recover for an intentional tort due to injuries resulting from a deliberate intent to injure; it allows recovery for an intentional tort where there is deliberate removal of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance; claims for discrimination, sexual harassment and retaliation are unaffected; and workers' compensation is a meaningful remedy for workers injured from conduct with an intent less than deliberate intent, including the potential for additional recovery when injury results from an employer's violation of a specific safety requirement.
4. R.C. 2745.01 does not violate the right to trial by a jury because it does not intrude on the traditional province of the jury (i.e., fact finding function) and it allows the jury to determine the damages when they are legally available. The right to a trial by jury does not prevent the General Assembly from altering a cause of action.
5. R.C. 2745.01 does not violate the right to due process in Ohio for multiple reasons including: the statute does not impinge upon fundamental rights; the statute is not unreasonable or arbitrary as it appears to harmonize the law of Ohio with the law of a clear majority of states; and it is rationally related to the legitimate purposes of maintaining the balance of sacrifices between employer and employee in the substitution of no-fault liability for tort liability in workers' compensation, and minimizing litigation.
6. R.C. 2745.01 does not violate the right to equal protection of the law. The Ohio Constitution itself distinguishes between employees injured on the job and persons injured other than in a workplace, and provides a no-fault method of recovery for employees, while also minimizing litigation.
7. R.C. 2745.01 does not violate the separation of powers. Because the General Assembly acted within its power to define scope and remedies for workplace intentional injury, the separation of powers doctrine is not violated by requiring all employees injured in the workplace other than as the result

of an employer intentional tort to recover within the workers' compensation system. And the statute does not remove the courts' powers to adjudicate claims of employer intentional torts.