

Case No. 5:07-CV-798
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Plaintiff Pirolozzi and against Defendant City of Canton as to both the remaining survivorship and wrongful death claims. [Doc. [274](#).] The jury awarded the Plaintiff compensatory damages of \$75,000 as to the survivorship claim and \$2,000,000 as to the wrongful death claim. [[Id.](#)]

On June 4, 2009, Defendant City of Canton moved this Court pursuant to [Ohio Revised Code § 2744.05\(B\)](#) to reduce the amount of the jury's verdict by the social security benefits that are payable to decedent Shawn Pirolozzi's children. [Doc. [277](#).] Because 42 U.S.C. § 1983 fails to address the issue of set-offs for collateral benefits, the Defendant argues that under 42 U.S.C. § 1988 this Court should apply state law to fill the gap. [[Id.](#)] Ohio law provides that collateral benefits owed to a claimant shall be deducted from an award against a political subdivision recovered by that claimant. [[Id. at 2](#) (citing [O.R.C. 2744.05\(B\)\(1\)](#)).] Given that the estate of Shawn Pirolozzi descends to his children, and those children will receive social security benefits as a result of his death until they are 18 years old, Canton argues that the amount of those social security benefits should be deducted from the jury award. [[Id. at 2](#).]

Plaintiff Pirolozzi responds that the Ohio law is inconsistent with the letter and spirit of § 1983 because it limits a party's ability to obtain damages for constitutional violations. [Doc. [281 at 3-4](#).] Therefore, Pirolozzi argues the state law is preempted and inapplicable. [[Id.](#)] Even if [O.R.C. § 2744.05\(B\)](#) were not preempted by § 1983, Pirolozzi argues that, "[b]ecause there has been no apportionment of the jury's verdict, which is in favor of the Estate and not the children, there is no basis upon which to now divide and/or reduce the judgment." [[Id. at 5](#).]

The common law collateral source rule governs this issue. "Under the collateral source rule, 'the receipt of collateral benefits is deemed irrelevant and immaterial on the issue of damages'" [Honeysett v. Williams, 2003 WL 25676461, at *8 \(N.D. Ohio July 3, 2003\)](#) (citing *Pryor v.*

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Webber, 263 N.E.2d 235, 239 (Ohio 1970)). Collateral source benefits include “*social security* and medicare payments and gratuitous physician’s fees.” *Id.* (emphasis added). The collateral source rule is applicable to damage questions in federal § 1983 actions. See [Gill v. Maciejewski](#), 546 F.3d 557, 565 (8th Cir. 2008); see also [Perry v. Larson](#), 794 F.2d 279 (7th Cir. 1986) (refusing to deduct unemployment compensation from verdict rendered in a § 1983 action because of the collateral nature of the benefit). In this case, the social security benefits payable to decedent Shawn Pirolozzi’s children are collateral source benefits, and thus will not be deducted from the damages awarded to Plaintiff Pirolozzi on the § 1983 claims.

Even if the Court were to look to state law, however, [O.R.C. § 2744.05\(B\)](#) does not apply. A subsequent provision, [O.R.C. § 2744.09\(E\)](#), exempts the instant case from coverage by [O.R.C. Chapter 2744](#). Specifically, [O.R.C. §2744.09](#) states, in pertinent part: “[t]his chapter does not apply to, and shall not be construed to apply to, . . . (E) [c]ivil claims based upon alleged violations of the constitution or statutes of the United States.” [O.R.C. § 2744.09\(E\)](#). “Where a plaintiff brings a civil action based upon alleged violations of a federal statute against a political subdivision, Chapter 2744 does not apply.” [Craig v. Columbus City Schools](#), 760 F.Supp. 128, 130 (S.D. Ohio 1991).

IV. Conclusion

For the foregoing reasons, this Court **DENIES** the Defendants’ motion to amend the judgment by reducing it to account for social security benefits. [Doc. [277](#).]

IT IS SO ORDERED.

Dated: July 24, 2009

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE