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Parker v. Town of Erwin

Court of Appeals of North Carolina - September 15, 2015 - S.E.2d - 2015 WL 5331924

Parents of almost four-year old pedestrian, who was killed in automobile accident after a parade, brought action individually and as administrator of pedestrian's estate against town and some of its employees in their official and individual capacities, chamber of commerce, landowners, and various emergency medical service providers for negligence and negligent infliction of emotional distress. The Superior Court denied town's motion to dismiss and granted motion to dismiss owner of the building located immediately adjacent to the site of the incident. Town and employees appealed, and parents cross-appealed.

The Court of Appeals held that:

- Trial judge was responsible to weigh evidence in determining if court had personal jurisdiction;
- Competent evidence supported trial court's determination that town did not waive sovereign immunity through the purchase of its insurance policy;
- Town had sovereign immunity from parents' claims with regard to services recognized as governmental functions;
- Remand was required for findings reflecting determination of the weight and sufficiency of evidence on sovereign immunity; and
- Parents failed to sufficiently allege that landowner breached duty to illuminate alley.

Competent evidence supported trial court's determination on ruling on motion to dismiss for lack of personal jurisdiction that town did not waive sovereign immunity through the purchase of its insurance policy. Evidence established that policy contained an express non-waiver of sovereign immunity endorsement.

A municipality's sovereign immunity is waived by the purchase of liability insurance only to the extent that the municipality is indemnified by the insurance contract from liability for the acts alleged; thus, a governmental entity does not waive sovereign immunity if the action brought against it is excluded from coverage under its insurance policy.

Remand was required in negligence action by minor pedestrian's parents against town for findings reflecting trial court's determination of the weight and sufficiency of evidence, and to determine whether parents established that alleged violations of statute requiring town to keep streets and alleys free from obstructions and gave it the power to close streets directly proximately caused driver to strike pedestrian such that dismissal of action against town on the basis of sovereign immunity was warranted, where trial court's order indicated that it considered evidence beyond allegations in parents' complaint.

The extent to which particular municipal streets and roads are kept open for use by members of the public is a governmental function such that governmental immunity is available to municipalities as a defense to damage claims arising from such discretionary road closure decisions.

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