
IMMUNITY - NORTH DAKOTA

Tangedal v. Mertens

Supreme Court of North Dakota - August 25, 2016 - N.W.2d - 2016 WL 4485811 - 2016 ND 170

Property owners brought negligence action against governmental entity responsible for septic system inspections.

The District Court granted summary judgment in favor of entity and denied property owners' motion to amend their complaint to add entity employee as a defendant. Property owners appealed.

The Supreme Court of North Dakota held that public duty immunity precluded property owners' negligence claim against governmental entity responsible for septic system inspections and its employee.

There was no special relationship between property owners and governmental entity responsible for septic system inspections and its employee, and therefore public duty immunity precluded property owners' negligence claims against entity and employee stemming from inspection, where invoice for septic inspection identified property owners' real estate agent as the customer, and property owners proffered no evidence to establish he existence of a special relationship.

A political subdivision and an employee may not be held jointly liable for a claim for an injury caused by the performance or nonperformance of a public duty unless a special relationship is established. When the existence of a special relationship is established, the political subdivision may be liable if the employee's actions are within the scope of employment and the employee may be personally liable if the employee's conduct within the scope of employment constitutes reckless or grossly negligent conduct, or willful or wanton misconduct.

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