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Scott v. Lancaster County School District 0001

Supreme Court of Nebraska - March 28, 2025 - N.W.3d - 318 Neb. 670 - 2025 WL 938315

Elementary school student brought negligence action against public school district under Political Subdivisions Tort Claims Act (PSTCA), alleging that classmate grabbed pool noodle that student was holding during game of tag in physical education class, causing student to fall.

The District Court denied school district's summary judgment motion alleging PSTCA sovereign immunity exemption for a claim arising out of a battery. School district filed interlocutory appeal.

The Supreme Court held that:

- Order denying summary judgment based on immunity was a final appealable order, and
- Factual dispute as to whether pool noodle was part of student's body for purposes of a battery precluded summary judgment based on immunity.

Order denying public school district's motion for summary judgment was a "final order" that could be immediately appealed, in elementary school student's negligence action against school district under Political Subdivisions Tort Claims Act (PSTCA) alleging that classmate grabbed pool noodle that student was holding during game of tag causing student to fall, where motion was based on the intentional torts immunity exemption to PSTCA.

Genuine issues of material fact existed as whether pool noodle was part of elementary school student's body during game of tag in physical education class, for purposes of an offensive contact battery under the intentional torts exemption to waiver of sovereign immunity under the Political Subdivisions Tort Claims Act (PSTCA), precluding summary judgment for public school district based on PSTCA immunity exemption, in student's negligence action against school district alleging that classmate acted against rules of the game and grabbed, yanked, and "swayed" the pool noodle that student was holding, causing student to fall and hit her head.

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