

SUPREME COURT OF NORTH CAROLINA

Evans v. Hous. Auth. of City of Raleigh, 359 N.C. 50

602 S.E.2d 668 (2004) · No. No. 216PA03 · Decided October 7, 2004

SUMMARY

The Supreme Court of North Carolina held that a housing authority organized under Chapter 157 of the North Carolina General Statutes performs a governmental function and is generally entitled to governmental immunity. The court further held that the authority could waive that immunity by purchasing liability insurance, but remanded for a determination of whether the insurance covered the plaintiff's lead-paint injury claims.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Edmunds, Justice
JURISDICTION	North Carolina
DECIDED	October 7, 2004
DOCKET	No. 216PA03
DISPOSITION	remanded
PROCEDURAL POSTURE	The defendant appealed the denial of its motion to dismiss on sovereign or governmental immunity grounds. The Supreme Court of North Carolina allowed discretionary review before determination by the Court of Appeals and remanded for a determination of whether the defendant's insurance covered the plaintiff's claims.
STANDARD OF REVIEW	De novo review of the trial court's denial of a motion to dismiss based on governmental immunity.
PRECEDENTIAL VALUE	Published North Carolina Supreme Court opinion; precedential.
PARTIES	Housing Authority of the City of Raleigh, North Carolina v. Annette Evans, as Guardian Ad Litem for Tyrone Horton

TOPICS

- municipal liability
- municipal law
- negligence
- personal injury
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a public housing authority organized under Chapter 157 of the North Carolina General Statutes is a municipal corporation entitled to governmental immunity for governmental functions.
2. Whether the provision of affordable housing for low- and moderate-income families is a governmental or proprietary function.
3. Whether a Chapter 157 housing authority has statutory authority to waive governmental immunity by purchasing liability insurance.
4. Whether the defendant's insurance policies covered the plaintiff's alleged injuries and therefore waived immunity to the extent of that coverage.

HOLDINGS

1. A housing authority organized under Chapter 157 is a municipal corporation and is entitled to governmental immunity for acts undertaken by its agents and employees in the exercise of governmental functions, but not for proprietary functions.
2. A housing authority organized under Chapter 157 performs a governmental function when it provides safe and sanitary housing for low- and moderate-income families.
3. A Chapter 157 housing authority has statutory authority to accept liability for its governmental functions through the purchase of liability insurance.
4. Governmental immunity is waived only to the extent that the defendant's liability insurance provides coverage, and the case must be remanded to determine whether the insurance covered the alleged lead-paint injuries.

KEY QUOTATIONS

“Accordingly, we reaffirm that a housing authority organized in accordance with the provisions of Chapter 157 of the North Carolina General Statutes provides a governmental function and is entitled to rely on the doctrine of governmental immunity.” (359 N.C. at 55; 602 S.E.2d at 672)

“Accordingly, we hold that a Chapter 157 housing authority has statutory authority to accept liability for its governmental functions by the purchase of insurance.” (359 N.C. at 57; 602 S.E.2d at 673)

FACTUAL BACKGROUND

Tyrone Horton lived with his family in housing owned and operated by the Housing Authority of the City of Raleigh from his birth until approximately 1 February 1996. The property contained pre-1978 paint with more than 0.5% lead by weight, and paint dust and chips allegedly created lead hazards exceeding standards in North Carolina law. Although the housing authority allegedly promised repairs, none were made, and Horton suffered lead poisoning and severe injuries.

PROCEDURAL HISTORY

Tyrone Horton, through his guardian ad litem, filed a Wake County Superior Court action alleging lead poisoning from conditions in housing owned and operated by the defendant. The defendant moved to dismiss for lack of personal jurisdiction and subject matter jurisdiction based on governmental immunity and lack of applicable insurance coverage. The superior court denied the immunity-based motion to dismiss. The defendant appealed, and the Supreme Court allowed discretionary review before Court of Appeals determination.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must determine whether the defendant's insurance policies covered the plaintiff's asserted claims and alleged injuries, including whether any lead-paint exclusions apply, and thus whether governmental immunity was waived to the extent of coverage.

CASES CITED

- Meyer v. Walls, 347 N.C. 97, 104, 489 S.E.2d 880, 884 (1997)
- Guthrie v. N.C. State Ports Auth., 307 N.C. 522, 533, 537-38, 299 S.E.2d 618, 624, 627 (1983)
- Orange Cty. v. Heath, 282 N.C. 292, 294, 192 S.E.2d 308, 309-10 (1972)
- Jackson v. Hous. Auth. of High Point, 316 N.C. 259, 262, 341 S.E.2d 523, 525 (1986)
- Cox v. City of Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940)
- Wells v. Hous. Auth. of Wilmington, 213 N.C. 744, 197 S.E. 693 (1938)
- Town of Grimesland v. City of Washington, 234 N.C. 117, 123, 66 S.E.2d 794, 798 (1951)
- Millar v. Town of Wilson, 222 N.C. 340, 341, 23 S.E.2d 42, 44 (1942)
- Britt v. City of Wilmington, 236 N.C. 446, 451, 73 S.E.2d 289, 293 (1952)
- Sides v. Cabarrus Mem'l Hosp., Inc., 287 N.C. 14, 22-23, 213 S.E.2d 297, 302-03 (1975)
- Koontz v. City of Winston-Salem, 280 N.C. 513, 528, 186 S.E.2d 897, 907 (1972)
- Hare v. Butler, 99 N.C. App. 693, 698, 394 S.E.2d 231, 235 (1990)
- Jackson v. Hous. Auth. of High Point, 73 N.C. App. 363, 326 S.E.2d 295 (1985)
- Martin v. N.C. Hous. Corp., 277 N.C. 29, 45, 175 S.E.2d 665, 674 (1970)
- Carter v. City of Greensboro, 249 N.C. 328, 333, 106 S.E.2d 564, 568-69 (1959)
- Carolinas Chapter NECA, Inc. v. Hous. Auth. of Charlotte, 29 N.C. App. 755, 756, 225 S.E.2d 653, 653-54 (1976)
- Seibold v. City of Kinston, 268 N.C. 615, 621, 151 S.E.2d 654, 658 (1966)
- Mabrey v. Smith, 144 N.C. App. 119, 121, 548 S.E.2d 183, 185 (2001)