summary judgment on all of Plaintiffs' claims because the Plaintiffs were never their employees. The Court claimed that even if Plaintiffs had disputed this fact, which they did not, their allegations failed to show that they were employees of PCT and PTI merely because they drove customers of PCT and PTI on multiple occasions. The Court held that a reasonable jury could not reach the conclusion that Plaintiffs were employees of PCT and PTI and therefore held that PCT and PTI could not be liable under any of Plaintiff's causes of action because the causes of action are derived from the employer-employee relationship.

Accordingly, the Court granted the Defendants' Motion for Partial Summary Judgment in favor of the Defendants.

Joshua Nowak

Roper v. Carneal, No. 14CA0364 (Colo. App. Feb. 12, 2015) (order affirming trial court's denial of motion to dismiss) (holding: (1) a vehicle that qualifies as "special mobile machinery" under Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014) cannot also qualify as a "motor vehicle"; (2) in determining whether a vehicle qualifies as "special mobile machinery" or as a "motor vehicle," under Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014) use at the time of the incident is relevant but not dispositive, the proper inquiry is into the vehicle's design and common use; (3) a vehicle that is generally and commonly used to transport either persons or property over the public highways may qualify as a "motor vehicle"; (4) where a vehicle operates and transports maintenance materials exclusively on the public highways, that vehicle meets the "motor vehicle" definition; and (5) where operation over public highways is essential to a vehicle's function, that vehicle cannot be 'only incidentally operated or moved over the public highways').

Plaintiff, Tina Roper, filed suit alleging claims of negligence per se, negligence, respondeat superior, and property damage/loss of use against the defendants, Daniel R. Carneal and the Board of County Commissioners of the County of El Paso, Colorado. Roper claimed that Carneal was driving a county-owned snowplow when he allegedly ran a stop sign. Roper then drove off the road to avoid Carneal and crashed into a culvert and a fence, suffering personal injuries and damage to her car. The defendants claimed that they were immune from suit under the Colorado Government Immunity Act ("CGIA"), because a snowplow qualified as "special mobile machinery" rather than a "motor vehicle," and therefore the motor vehicle waiver of immunity did not apply.

This case turned on the issue of whether the snowplow was a "motor

vehicle", subject to the CGIA waiver provision, or "special mobile machinery", not subject to the waiver. The court began its review of whether the terms "motor vehicle" or "special mobile machinery," were mutually exclusive and whether the snowplow's modifications and use at the time of accident were relevant to the analysis. The defendants argued that the terms "motor vehicle" and "special mobile machinery" were mutually exclusive. The court agreed with the defendants based on the plain language of the statute. Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014). In addition, the defendants argued that the court should consider both the vehicle's modifications (attachment of a snowplow blade, tailgate sander, etc.) and its use as a snowplow at the time of the incident in determining which definition applies. Based on the reasoning in *Henderson* and *Herrera,* the court found that modifications were relevant, but that the use at the time of the incident was only probative and not dispositive to the proper inquiry concerning the vehicle's design and common use. Henderson v. City & Cnty. of Denver, 300 P.3d 977 (Colo. App. 2012); Herrera v. City & Cnty. of Denver, 221 P.3d 423 (Colo. App. 2009).

Next, the court considered whether the snowplow in question fit into either the definition of motor vehicle or special mobile machinery. The court applied the definition of motor vehicle in Colo. Rev. Stat. § 42-1-102(58) (2014): a "motor vehicle must be (1) designed primarily for travel on the public highways and (2) generally and commonly used to transport persons and property over the public highways." Although the defendants argued that a snowplow is designed primarily for road maintenance rather than travel, the court found this argument unpersuasive because the snowplow's maintenance function—plowing snow on country roads—requires travel on public highways. Further, the court determined that in order to avoid absurd outcomes the "and" should be interpreted as "or" in the second element of the motor vehicle definition. The snowplow in question met the second element because it carried a mixture of sand and salt that constituted "property" under the ordinary meaning of the term. The court noted that the key distinction between "motor vehicle" and "special mobile machinery" was whether a vehicle is designed and used for transportation over the public highways and not what type of material constituted property.

Finally, the court considered whether the snowplow fit into the modified vehicle definition of "special mobile machinery" the court applied the definition in Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014): (1) the vehicle must be redesigned or modified by the addition of mounted equipment or machinery" and (2) it must be "only incidentally operated or moved over the public highways." The defendants argued that driving on the public highways is only incidental to the snowplows primary purpose of maintaining the highways by plowing snow. The court disagreed.

The court interpreted "incidentally" according to its plain meaning and found that because the snowplow was driven exclusively over public highways, operation over public highways was essential to it's function in maintaining those highways. The court did not consider the first element because the second element of the definition was not met.

Ultimately, the trial court concluded that the snowplow was a "motor vehicle" rather than "special mobile machinery," and therefore, governmental immunity was waived under CGIA. Accordingly, the appellate court affirmed the trail court's order to deny the defendant's motion to dismiss plaintiff's tort action under the CGIA.

Shaquille Turner

Sperry v. Fremont Cnty. Sch. Dist., No. 2:13-CV-00179-ABJ, 2015 WL 456518 (D. Wyo. Feb. 3, 2015) (holding the defendant's motion for summary judgment was granted in part on the basis that the motor vehicle exception and the public utility exception to governmental immunity under the Wyoming Governmental Claims Act ("WGCA") did not apply to various negligence claims related to hiring and training of school bus drivers, entrustment of a motor vehicle, and bus routing. Motion for summary judgment was denied in part on the basis that the insurance coverage exception to government immunity under WGCA applied to claims for negligent design and routing of bus routes and stop locations).

Plaintiffs, members of the deceased's family, brought claims against the Freemont County School District ("FCSD") alleging negligence, wrongful death, negligent infliction of emotional distress, and loss of consortium. Plaintiffs claimed that the deceased student was struck and killed by a motor vehicle while crossing a street after getting off a school bus owned and operated by FCSD.

Plaintiffs alleged that the negligent acts included: negligent operation of a motor vehicle; negligent failure to keep a look out; negligent failure to ensure the safety of students; negligent routing of school buses; negligent failure to train employees; negligent entrustment of a motor vehicle; negligent procedures for exiting a school bus; negligent failure to drop students off in safe locations; negligent instruction to students while exiting school buses and crossing the highway, among other similar negligence claims. FCSD moved for summary judgment and argued that the WGCA barred Plaintiff's negligence claims.

The court first examined the immunity provided by the WGCA, the relevant exceptions to the act, and their application to the case. The court examined the specific language of the motor vehicle exception, which ap-

plies to the negligent operation of any motor vehicle. FCSD conceded that the motor vehicle exception applied and FCSD was not immune from several of the negligence claims. The remaining issues included whether the FCSD's actions of bus routing, training bus drivers, entrusting a vehicle to bus drivers, and providing instructions to student-pedestrians constituted the 'operation' of a motor vehicle.

Under Wyoming Supreme Court precedent, none of these actions constituted the 'operation' of a motor vehicle. This court agreed, and found that FCSD did not waive immunity under the motor vehicle exception for those actions. However, the court found that FCSD waived immunity for the Plaintiff's claim of failure to properly instruct a student-pedestrian regarding highway crossing.

The court next examined the specific language of the public utility exception under the WGCA. The Plaintiffs argued that FCSD could not claim immunity under the WGCA because it was a governmental entity whose employees operate a "public utility" and provide "ground transportation service" to the public. Relying upon the definition of a "public utility" in Wyo. Stat. Ann. § 37-1-101(a) and prior interpretation by the Wyoming Supreme Court in other contexts (cases involving an irrigation district and rural electric company), the court determined that operating a school bus was a not a public utility as contemplated under the WGCA exception because its services were available only to students and not the general public. Therefore, the public utility exception was inapplicable.

The court subsequently examined the specific language of the insurance coverage exception under the WGCA. Plaintiffs argued that the FCSD insurance policy covered liability for bus routes and bus stop locations and therefore waived WGCA immunity to the extent of the insurance coverage. FCSD argued that they did not waive immunity from claims of negligent design of bus routes and stops by purchasing automobile insurance because the claims did not arise from the use, operation, or maintenance of an automobile and therefore were not covered. The court found that the student's injury was a foreseeable risk and incident to FCSD's decision to place bus stops in a location that required children to cross a highway. Therefore, it concluded that FCSD's insurance policy covered the Plaintiff's claims of bus routing and stops, and FCSD waived immunity to the extent of the insurance policy amount.

In sum, the court found that FCSD waived immunity for negligent instructions to student-pedestrians and negligent design of bus routes and stops. However, FCSD was immune from claims of negligent hiring and training of bus drivers, and negligent entrustment of vehicles to bus drivers.

Finally, the court considered the application of summary judgment to the remaining claims: negligent operation of a motor vehicle, failure to

lookout, negligent care of students, and failure to follow regulations. The court determined there were genuine issues of material fact regarding the bus driver's actions and (1) failure to follow required procedures, (2) failure to follow the CDL manual, (3) failure to keep a proper lookout, (4) awareness of "fly bys" and the danger of unloading children, and (5) concern regarding crossing the highway at night. Therefore, the court determined that summary judgment was not appropriate.

Accordingly, the court granted FCSD's motion for summary judgment with regard to the claims for negligent hiring and training of bus drivers, and negligent entrustment of vehicles to bus drivers, and denied summary judgment for the remainder of Plaintiff's negligence claims.

Jenya Berino

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