

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 its 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 trial 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 Fremont 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

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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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