

No. 91-464

IN THE SUPREME COURT OF THE STATE OF MONTANA

1992

KEVIN A. SAUTER, Guardian ad Litem
for BRAD SAUTER, and KEVIN SAUTER,
individually,

Plaintiffs and Appellants,

-vs-

SCHOOL DISTRICT NO. 2; JUDY EVANS; AND
JANE DOE,

Defendants and Respondents.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and for the County of Yellowstone,
The Honorable G. Todd Baugh, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

David R. Paoli; Edwards & Paoli, Billings, Montana

For Respondent:

Michael W. Tolstedt; Brown, Gerbase, Cebull, Fulton,
Harman & Ross, Billings, Montana

Submitted on Briefs: February 27, 1992

Decided: March 31, 1992

FILED
Filed:
MAR 31 1992
Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA



Clerk

Justice R. C. McDonough delivered the Opinion of the Court.

This is an appeal from a negligence action brought against Billings School District No. 2 for injuries suffered by Brad Sauter, an elementary school student in that district. The District Court of the Thirteenth Judicial District, Yellowstone County, granted a motion to dismiss on the basis of the legislative immunity provisions of § 2-9-111, MCA (1989). This motion was granted prior to the 1991 legislative amendment to said section. We reverse.

The only issue requiring our review is whether, in the case at bar, § 2-9-111, MCA, provides immunity to the School District. An additional issue regarding the timeliness of the filing of this appeal is raised by the respondents. However, that issue was resolved by order of this Court, October 22, 1991, whereby we determined this appeal to be timely filed.

Appellant, Brad Sauter (Sauter), was injured when his fingers were caught in and crushed by the door at Ponderosa Elementary School, School District No. 2, Billings, Montana. At the time, Sauter was a second grade student at the school. Sauter alleges that the injuries are the result of negligent supervision by the defendants. The action was dismissed on the basis of legislative immunity as provided under § 2-9-111, MCA (1989).

Section 2-9-111, MCA, was amended by the 1991 Legislature. Under the newly amended statute, a governmental entity is only immune from its legislative acts and is no longer immune for its

administrative acts. Section 2-9-111, MCA. The District Court relied on our decisions in Peterson and Eccleston and found the School District to be immune from suit for allegations of failing to provide a safe environment. Peterson v. Great Falls School District (1989), 237 Mont. 376, 773 P.2d 316; State of Montana Ex Rel. Eccleston v. Montana Third Judicial District Court (1989), 240 Mont. 44, 783 P.2d 363. However, § 2-9-111, MCA, as amended, no longer provides school districts immunity from claims such as Sauter makes in the instant action.

Generally, an appellate court must apply the law in effect at the time it renders its decision. Lee v. Flathead County (1985), 217 Mont. 370, 704 P.2d 1060; Thorpe v. Housing Authority of the City of Durham (1969), 393 U.S. 268, 89 S.Ct. 518, 21 L.Ed.2d 474. When subsequent to judgment and prior to our decision on appeal, the legislature amends an applicable statute, the amended version of the statute is controlling to the case. Paulson v. Lee (1987), 229 Mont. 164, 745 P.2d 359.

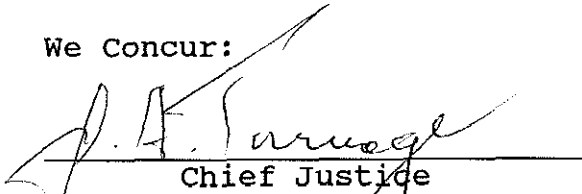
We conclude that § 2-9-111, MCA, as amended in 1991, and effective May 24, 1991, is controlling of the instant case. Furthermore, we conclude, under § 2-9-111, MCA (1991), Billings School District No. 2 is not immune from suit for the alleged negligent supervision of children at school. The District Court is reversed.

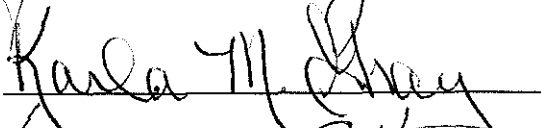
Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as

precedent and shall be published by its filing as a public document with the Clerk of this Court and by a report of its result to the West Publishing Company.


Justice

We Concur:


Chief Justice






Justices

March 31, 1992

CERTIFICATE OF SERVICE

I hereby certify that the following order was sent by United States mail, prepaid, to the following named:

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ED SMITH
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BY: 
Deputy