NO. COA01-663

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

SCEVA KAY PADGETT, by and
Through her Guardian ad litem,
Kay D. Padgett, and KAY D. PADGETT,
Individually,

Plaintiffs,

v. Iredell County
No. 99 CVS 2678

PRO SPORTS, INC., t/a CHAMPION
SPORTS, IREDELL-STATESVILLE
BOARD OF EDUCATION, BRANDON
JOHNSON, a minor, and THE
PROPHET CORPORATION,

Defendants.

Appeal by defendant from order entered 19 March 2002 by Judge Sanford L. Steelman, Jr., in Superior Court, Iredell County. Heard in the Court of Appeals 13 March 2002.

Pressley, Thomas & Conley, P.A., by Edwin A. Pressley for plaintiff-appellants.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Neil P. Andres and Shannon P. Herndon, for defendant-appellant, Iredell-Statesville Board of Education.

Kennedy Covington Lobdell & Hickman, by Wayne B. Huckel for defendant Pro Sports, Inc., t/a Champion Sports.

Williardson & Lipscomb, LLP, by William F. Lipscomb, for defendant, Brandon Johnson.

John H. Beyer, for defendant, The Prophet Corporation.

WYNN, Judge.

This appeal arises from the trial court's refusal to dismiss allegations that Iredell-Statesville Board of Education negligently provided an unsafe bat for students to use in ball game activities, and failed to adequately inspect the bat. The pertinent facts stem from a wiffle ball game at school in which a classmate lost his grip on a bat that struck the minor plaintiff causing permanent injury to her left eye.

Although the action was brought against additional entities, this appeal concerns only the allegations against Iredell-Statesville Board of Education since our case law permits such an interlocutory appeal when a governmental entity seeks dismissal on sovereign immunity grounds. *See Hedrick v. Rains,* 121 N.C. App. 466, 466 S.E.2d 281, *affirmed,* 344 N.C. 729, 477 S.E.2d 171 (1996). We uphold the trial court's denial of the motion to dismiss.

In ruling on a Rule 12(b)(6) motion, the trial court must determine whether the well-pleaded factual allegations in the complaint, as opposed to conclusions of law or unwarranted deductions in the complaint, state a claim for relief. *Sutton v. Duke*, 277 N.C. 94, 176 S.E.2d 161 (1970). "In order to survive a motion to dismiss under Rule 12(b)(6) a plaintiff must only 'state enough to give the substantive elements of a legally recognized claim.'" *Booher v. Frue,* 86 N.C. App. 390, 392, 358 S.E.2d 127, 128 (1987) (quoting *Raritan River Steel Co. v. Cherry, Bekaert and Holland*, 79 N.C. App. 81, 85, 339 S.E.2d 62, 65, *disc. rev. granted*

in part, 316 N.C. 734, 345 S.E.2d 392 (1986) *judgment affirmed in part, reversed in part*, 322 N.C. 200, 367 S.E.2d 609 (1988)).

In general, the doctrine of sovereign immunity insulates governmental entities from tort actions unless the entity has waived such immunity either explicitly, or implicitly by purchasing liability insurance. *See Herring ex rel. Marshall v. Winston-Salem/Forsyth County Bd. of Educ.*, 137 N.C. App. 680, 529 S.E.2d 458, *cert. denied*, 352 N.C. 673, 545 S.E.2d 423 (2000). In this case, the complaint alleged that:

> 5. Iredell-Statesville Board of Education upon information and belief, has waived its governmental immunity by providing, paying for and joining an insurance facility providing insurance coverage for acts of negligence committed by its employees, among others issued by a company as referred to in N.C. G.S. sec. 115C-42 in effect during February, 1999 in general and/or February 3, 1999, specifically.
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> 6. Iredell-Statesville Board of Education as policyholder on February 3, 1999, had in effect a liability insurance policy executed by N.C. School Board Insurance Trust as the insurer.

Since this appeal is based on defendant's motion to dismiss, we must treat plaintiffs' factual allegations as true. *See Block v. County of Person*, 141 N.C. App. 273, 275, 540 S.E.2d 415, 417 (2000).

Moreover, N.C. Gen. Stat. § 115C-42 (1999) provides that:

> Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person

> or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Although the Complaint does not explicitly allege that defendant had coverage for the full amount, on a motion to dismiss under Rule 12(b)(6), the pleadings are liberally construed and under a liberal construction this is a sufficient allegation that Iredell-Statesville Board of Education has liability insurance to recover the requested damages. *See Anderson By and Through Jerome v. Town of Andrews*, 127 N.C. App. 599, 604, 492 S.E.2d 385, 387 (1997). Thus, this assignment of error is rejected.

Since this is the only assignment of error that concerns the issue of sovereign immunity, we dismiss the remaining assignments of error as interlocutory. *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950).

Affirmed in part, dismissed in part.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).