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NO. COA08-437

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

BARBARA STACY, Administratrix  
of the Estate of JOSHUA QUENTIN  
MITCHELL STACY, Deceased

Plaintiff,

v.

DR. JAMES T. MERRILL, in his  
capacity as Superintendent of  
Alamance-Burlington Board of  
Education, AL SMITH, in his  
capacity as Director of  
Transportation of Alamance-  
Burlington Board of Education, and  
JEAN MANESS, in her capacity as  
Principal of R. Homer Andrews  
Elementary School, and ALAMANCE-  
BURLINGTON BOARD OF EDUCATION,

Defendants.

Appeal by defendants from order entered 9 January 2008 by  
Judge W. Osmond Smith, III in Alamance County Superior Court.  
Heard in the Court of Appeals 11 September 2008.

*Law Offices of Steven L. Evans, P.C., by Steven L. Evans, for  
plaintiff-appellee.*

*Cranfill, Sumner & Hartzog, L.L.P., by Ann S. Estridge, for  
defendants-appellants.*

STEELMAN, Judge.

Alamance County  
No. 06 CVS 1456  
**Court of Appeals**  
**Slip Opinion**

Where the Industrial Commission had exclusive jurisdiction over plaintiff's claims, and defendants did not waive sovereign immunity, the trial court erred in not dismissing plaintiff's complaint.

I. Factual and Procedural Background

The facts of this case are presented in *Stacy v. Merrill*, \_\_\_ N.C. App. \_\_\_, \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (filed 17 June 2008). Plaintiff Barbara Stacy is the mother of the decedent Quentin Stacy and the minor plaintiffs in the prior case.

On 21 June 2006, plaintiff filed a complaint in the Superior Court of Alamance County. Plaintiff's complaint alleged the following negligent conduct on the part of defendants: (1) designing a pedestrian, bicycle and vehicular traffic plan with no clearly marked pedestrian or bicycle lanes, with no fence, sidewalk, curb or other structure to separate pedestrian and bicycle traffic and vehicular traffic; (2) failing to supervise the elementary school children leaving the school campus; (3) failing to supervise or provide adequate training of bus drivers, including failure "to warn of the dangers of traveling through the area on Avalon Road congested by the presence and close proximity of students walking or riding bicycles"; and (4) failing to provide a reasonably safe exit route for the students at Andrews Elementary. The complaint further alleged that as a result of defendants' conduct, plaintiff and Timothy Stacy, Quentin's father, were entitled to recover damages for the wrongful death of Quentin. On 22 June 2006, plaintiff also filed a claim under the Tort Claims

Act, Article 31 of N.C. Gen. Stat. Chapter 143, with the Industrial Commission, alleging that Quentin Stacy was killed as a result of the negligence of the school bus driver and seeking funeral expenses and damages for wrongful death.

On 24 August 2006, defendants filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(2) of the North Carolina Rules of Civil Procedure. The motion to dismiss was heard on 6 November 2006. On 5 January 2007, Judge W. Osmond Smith, III entered an order granting defendants' motion to dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(2). On 7 August 2007, plaintiff moved for relief from the 5 January order pursuant to Rule 60 of the North Carolina Rules of Civil Procedure. On 24 August 2007, defendants filed a second motion to dismiss pursuant to Civil Procedure Rule 12(b)(1). Following a hearing on 16 October 2007, plaintiff's Rule 60 motion was allowed and defendants' motion to dismiss was denied by order filed on 9 January 2008. Defendants appeal.

## II. Analysis

This case is controlled by our prior holdings in *Stacy*. Under the facts alleged in plaintiff's complaint, her claims fall within the scope of N.C. Gen. Stat. § 143-300.1. Thus, the Industrial Commission had exclusive jurisdiction over plaintiff's claims. Further, plaintiff's claims were barred by sovereign immunity, and the trial court erred in granting plaintiff's Rule 60(b) motion and denying defendants' motion to dismiss. The order of the trial court is reversed and this matter remanded to the trial court for entry of an order dismissing plaintiff's action.

REVERSED and REMANDED.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).