

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-953-2

Filed 20 February 2024

North Carolina Industrial Commission, No. TA-29127

MAYMEAD, INC., Plaintiff,

v.

ALEXANDER COUNTY BOARD OF EDUCATION, Defendant.

Appeal by Defendant from order entered 25 August 2022 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 April 2023. Petition for rehearing granted 18 December 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Carl Newman, for Defendant-Appellant.

David W. Yates, for Plaintiff-Appellee.

CARPENTER, Judge.

The Alexander County Board of Education (the “Board”) appealed from the North Carolina Industrial Commission’s (the “Commission’s”) denial of the Board’s motion for summary judgment. On appeal, the Board argued that the Commission erred by finding waiver of sovereign immunity and denying the Board’s motion for summary judgment. In an unpublished opinion, we affirmed the Commission’s denial

of summary judgment. After granting the Board’s petition for rehearing and upon additional review, we agree with the Board. Accordingly, we reverse the Commission’s denial of summary judgment.

I. Factual & Procedural Background

On 10 March 2020, Governor Roy Cooper issued Executive Order 116 and declared a state of emergency because of the Covid-19 pandemic. On 14 March 2020, Governor Cooper issued Executive Order 117, which closed North Carolina schools and ordered “the North Carolina Department of Public Instruction . . . to implement measures to provide for the health, nutrition, safety, educational needs and well-being of children during the school closure period.”

On 30 March 2020, Karen Kondas drove an Alexander County school bus for the sole purpose of delivering meals to remote-learning students. That day, Kondas’ bus collided with Maymead, Inc.’s (“Plaintiff’s”) asphalt paver. On 7 January 2021, under North Carolina’s Tort Claims Act (the “TCA”), Plaintiff filed a property-damage claim before the Commission against the Board. After discovery, the Board moved for summary judgment based on sovereign or governmental immunity.¹ Specifically, the Board argued that it maintained sovereign immunity because Kondas, under the

¹ Here, the Board is a county agency. Therefore, the applicable immunity is more precisely labeled “governmental immunity.” *See Irving v. Charlotte-Mecklenburg Bd. of Educ.*, 368 N.C. 609, 611, 781 S.E.2d 282, 284 (2016). In this case, however, the distinction, is immaterial, as “this claim implicates sovereign immunity because the State is financially responsible for the payment of judgments against local boards of education for claims brought pursuant to the Tort Claims Act” *See id.* at 611, 781 S.E.2d at 284.

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North Carolina Emergency Management Act (the “EMA”), was performing an emergency-management activity during the incident. The Board argued that the EMA explicitly maintains immunity for such incidents. In other words, the Board acknowledged that the TCA and the EMA conflict, but argued that the EMA controls.

A deputy commissioner denied the Board’s motion for summary judgment, and the Board timely appealed to the full Commission. On 25 August 2022, the full Commission panel agreed that the EMA conflicts with the TCA concerning waiver of sovereign immunity for school-bus claims. Nevertheless, the full Commission denied the Board’s request for a full-panel review because the Board did not meet “its burden of showing that it would be deprived of a substantial right.” On 22 September 2022, the Board timely appealed to this Court.

On 17 October 2023, we issued an unpublished opinion, *Maymead, Inc. v. Alexander County Board of Education*, No. 22-953, 2023 N.C. App. LEXIS 641 (N.C. Ct. App. Oct. 17, 2023), affirming the Commission’s denial of summary judgment because a material question of fact remained. On 21 November 2023, the Board filed a petition for rehearing, arguing that we should reconsider our holding. On 18 December 2023, we granted the Board’s petition for rehearing.

II. Issue

The issue is whether the Commission erred in denying the Board’s motion for summary judgment.

III. Conclusion

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For the same reasons we detailed in *Williams v. Charlotte-Mecklenburg Schools Board of Education*, No. 22-293-2, ___ N.C. App. ___, ___ S.E.2d ___ (2024), filed concurrently with this opinion, we have jurisdiction to hear this case, and the Board is immune from suits concerning school-bus accidents when the bus is used for emergency-management purposes. Accordingly, we hold the Commission erred in denying the Board's motion for summary judgment, and we reverse.

REVERSED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).