

In Brief

January 2010

FIRST DISTRICT ILLINOIS APPELLATE COURT REAFFIRMS HIGHER STANDARD FOR PLEADING WILLFUL AND WANTON MISCONDUCT

The Appellate Court for the First District of Illinois has reaffirmed that a complaint's "bare-bones" allegations of willful and wanton misconduct are insufficient to overcome the immunity provided to governmental entities by the Tort Immunity Act. The Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1 et al., (the "Tort Immunity Act") protects local governmental entities and their employees from liability for negligence committed during the exercise of their duties¹. The Tort Immunity Act only allows liability to attach when public employers and their employees are "willful and wantonly negligent" in their supervision of an activity or they are required by law to supervise an activity and they willfully and wantonly fail to provide such supervision².

The Tort Immunity Act defines willful and wanton conduct as,

A course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property³.

To properly allege a cause of action for willful and wanton misconduct, a plaintiff must allege sufficient facts which demonstrate that a governmental entity engaged in not only negligent conduct (i.e., that the

defendant had a duty to protect plaintiff, that the defendant breached that duty and that the breach proximately caused plaintiff's injuries) but also engaged in a course of action that showed deliberate intent to harm an individual or an utter indifference or conscious disregard for the individual's welfare⁴.

The First District Appellate Court scrutinized both the definition of willful and wanton conduct and the elements which must be alleged to state a sufficient claim for such conduct in a recent case involving an Illinois public school⁵. Specifically, in December, 2006, Hazel Crest School District (the "District") hosted a middle school boys' basketball game. One of the students from the visiting school and his grandmother alleged that they were injured during a physical altercation which took place after the boys' basketball game. The student and his grandmother filed a complaint against the District alleging that the District's willful and wanton conduct resulted in their physical injuries. In support of their claims, Plaintiff alleged acts such as the District's students, players and fans engaged in unsportsmanlike conduct during the game; the District's students committed hard fouls during the game; and the District's students, players, and fans stared at the opposing team in a "menacing manner."

The District filed a motion to dismiss the complaint because Plaintiffs had alleged no facts to support the claim that the District had knowledge of an impending danger. In addition, the District argued that absent such allegations of willful and wanton

1 See Mitchell v. Special Education Joint Agreement School District No. 208, 386 Ill. App. 3d 106 (2008).

2 See 745 Illinois Compiled Statutes ("ILCS") Section 10/3-108.

3 745 Ill. Comp. Stat. 10/1-210 (2009).

4 See Floyd v. Rockford Park District, 335 Ill. App. 3d 695 (2005).

5 This lawsuit was filed in the Circuit Court of Cook County as Parker v. Hazel Crest School District, et al, No. 07 L 12044.

misconduct, it was immunized from liability by Section 3-108 of the Tort Immunity Act. The trial court agreed with the District and dismissed the complaint.

The Plaintiffs then appealed the dismissal of their complaint to the Illinois Appellate Court. In response to Plaintiffs' appeal, the District argued that Plaintiffs' allegations were insufficient to support a claim of willful and wanton misconduct. In particular, the District asserted that claims of hard fouls during an 8th grade boys' basketball game and menacing stares do not demonstrate that the District deliberately intended to harm Plaintiffs or had an utter indifference to or conscious disregard for the Plaintiffs' welfare. The District further argued that absent these claims, the District's immunity under the Tort Immunity Act remained intact.

The Illinois Appellate Court agreed with the District and upheld the dismissal of the Plaintiffs' complaint holding that Plaintiffs failed to allege a sufficient claim of willful and wanton conduct against the District. In making this determination, the Appellate Court held that a plaintiff must plead a "course of action" that proximately caused his or her injuries in order to maintain a successful claim of willful and wanton

conduct. The Appellate Court confirmed that willful and wanton conduct is either a deliberate intention to harm or an utter indifference to or conscious disregard for the individual's welfare.

In reviewing Plaintiffs' allegations, the Appellate Court agreed with the District that Plaintiffs made no allegations that the District was aware of any impending danger. In addition, the Court found that Plaintiffs did not allege facts that suggested that the District was reckless or careless in failing to discover the dangerousness of students and fans and attempting to prevent it. As a result, Plaintiffs had failed to allege a claim of willful and wanton misconduct and the District was immunized from Plaintiffs' claims by the Tort Immunity Act.

The *Parker* case, discussed above, provides school districts with an assurance that the willful and wanton conduct standard demands a higher level of pleading from plaintiffs in order to allege a sufficient cause of action. Absent factual allegations that demonstrate that school district personnel deliberately intended to harm an individual or had utter indifference to or conscious disregard for the individual's welfare, a lawsuit is insufficient and subject to immediate dismissal.

This Client In Brief was prepared by Amanda G. Tiebert of the firm's Chicago office.

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