

NO. COA95-705

NORTH CAROLINA COURT OF APPEALS

Filed: 30 April 1998

SHIRLEY CROSS and CHARLES A. CROSS, individually and as
administrators of the Estate of Barry Ellis Cross and Janette
Griffin,

Plaintiffs,

v.

RESIDENTIAL SUPPORT SERVICES, INC.; ROBERT HAMILTON RHODES, JR.;
and MECKLENBURG COUNTY,
Defendants.

On remand from the Supreme Court in light of its decision in
Lyles v. City of Charlotte, 344 N.C. 676, 477 S.E.2d 150 (1996).

*Devore & Acton, P.A., by Fred W. DeVore, III, for plaintiffs-
appellants.*

*Ruff, Bond, Cobb, Wade & McNair, L.L.P., by James O. Cobb, for
defendant-appellee Mecklenburg County.*

LEWIS, Judge.

This case is before us for the second time. In our opinion
filed 20 August 1996, we held that defendant Mecklenburg County had
waived its governmental immunity by participating in a local
government risk pool. *Cross v. Residential Support Services, Inc.*,
123 N.C. App. 616, 622, 473 S.E.2d 676, 679 (1996) (*Cross I*). We
therefore reversed and remanded the trial court's order granting
summary judgment for the County on grounds of governmental
immunity.

Mecklenburg County filed a petition for discretionary review
and, in an order filed 7 February 1997, the North Carolina Supreme
Court remanded to this Court for further consideration in light of
the case *Lyles v. City of Charlotte*, 344 N.C. 676, 477 S.E.2d 150

(filed 8 November 1996).

In *Lyles*, our Supreme Court held that the "insurance and risk management" agreement between the City of Charlotte, Mecklenburg County, and the Charlotte-Mecklenburg Board of Education was not a local government risk pool. *Id.* at 681, 477 S.E.2d at 153. Therefore, the City of Charlotte had not waived its governmental immunity. *Id.*

Based on the Supreme Court's holding in *Lyles*, our conclusion in *Cross I* that Mecklenburg County waived its governmental immunity by participating in a local government risk pool was erroneous. We now hold that defendant Mecklenburg County has not waived its governmental immunity by participating in a local government risk pool. Our opinion filed 20 August 1996 is hereby vacated to the extent that it conflicts with our holding today.

Plaintiffs' single assignment of error, that the trial court erred in ruling that defendant Mecklenburg County has governmental immunity for claims of \$1,000,000 or less, is overruled. The trial court's grant of partial summary judgment for defendant Mecklenburg County on this issue is affirmed, and the case is remanded to Mecklenburg County Superior Court for further proceedings consistent with this opinion.

Judges GREENE and SMITH concur.