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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-614

Filed 17 December 2024

Harnett County, No. 23CV003394

SHAWN GRONLUND, Plaintiff,

v.

SARAH JANE HAWK, Individually and as Cumberland County Sheriff Deputy; ENNIS WRIGHT, Individually and as Cumberland County Sheriff; CUMBERLAND COUNTY SHERIFF'S DEPARTMENT; CLARENCE GRIER, Individually and as Cumberland County Manager; COUNTY OF CUMBERLAND; ECONOMY FIRE & CASUALTY COMPANY, a.k.a. ECONOMY FIRE AND CASUALTY INSURANCE COMPANY; FARMERS INSURANCE GROUP, a.k.a. FARMERS GENERAL INSURANCE AGENCY, INC., FARMERS CASUALTY INSURANCE COMPANY, and/or FARMERS DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY, Defendants.

Appeal by plaintiff from order entered 17 April 2024 by Judge C. Winston Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 5 November 2024.

*Brent Adams & Associates, by Christopher B. Wencker, for plaintiff-appellee.*

*Cranfill Sumner LLP, by Ryan L. Bostic, for defendants-appellants.*

PER CURIAM.

This case arises out of a car collision involving Plaintiff Shawn Gronlund and

Defendant Cumberland County Sheriff's Deputy Sarah Jane Hawk. Defendants appeal from a trial court order denying their Motion to Dismiss based on governmental and public official immunity. Specifically, Defendants contend that Plaintiff failed to allege facts sufficient to overcome immunity and that they are entitled to relief on interlocutory appeal. We agree.

I. Facts and Procedural History

On 5 October 2021, Plaintiff was driving west on N.C. State Road 1714 outside the town of Wade. Deputy Hawk was driving a Cumberland County Sheriff's Department vehicle in the same direction farther up the road. Plaintiff alleged that Deputy Hawk was driving erratically, varying her speed, and failing to stay in the westbound lane. When Deputy Hawk slowed down, Plaintiff attempted to pass her at a marked passing section. At the same time, Deputy Hawk executed a left turn. The two vehicles collided, resulting in Plaintiff's injury.

Plaintiff filed suit against Deputy Hawk; Ennis Wright, the Sheriff of Cumberland County; and Cumberland County (collectively, "Appellants"). He also filed suit against the Cumberland County Sheriff's Department (hereinafter the "Sheriff's Office"); Cumberland County's Manager, Clarence Grier; and the County's insurance carrier, Defendant Economy Fire & Casualty Company. Plaintiff amended his complaint to add his uninsured motorist insurance carrier as a defendant.

Certain Defendants moved to dismiss Plaintiff's claims against them pursuant to Rules 12(b)(1)-(6) of our Rules of Civil Procedure, arguing they were immune from

suit in both their official and personal capacities because of governmental immunity and public official immunity, respectively.

Following a hearing on the matter, the trial court entered an order dismissing Plaintiff's claim against the Sheriff's Office and the Cumberland County Manager (Defendant Grier). The trial court, however, denied Appellants' motion to dismiss. Appellants timely appeal.

## II. Analysis

Appellants appeal from the trial court's order denying their motion to dismiss, arguing governmental and public immunity prevent them from being held liable for the accident. We agree and, therefore, reverse and remand to the trial court for entry of dismissal of Plaintiff's claims against Appellants.

### A. Appellate Jurisdiction

When a defendant appeals denial of a motion to dismiss, that appeal is interlocutory. *Mitchell v. Pruden*, 251 N.C. App. 554, 558 (2017). Generally, "a party has no right of immediate appeal from interlocutory orders and judgments." *Bartels v. Franklin Operations, LLC*, 288 N.C. App. 193, 195 (2023) (citations and internal marks omitted). However, "this Court has repeatedly held that appeals raising issues of governmental or sovereign immunity affect a substantial right sufficient to warrant immediate appellate review." *Hines v. Yates*, 171 N.C. App. 150, 156 (2005).

### B. Immunity

Governmental immunity insulates municipalities from "suit for the negligence

of its employees in the exercise of governmental functions absent a waiver of immunity.” *Est. of Williams ex rel. Overton v. Pasquotank Cnty. Parks & Recreation Dept.*, 366 N.C. 195, 198 (2012) (citations and internal marks omitted). Sheriffs and their deputies benefit from governmental immunity in their official capacity. *Butterfield v. Gray*, 279 N.C. App. 549, 554 (2021).

Governmental immunity may be waived by the government entity. *See Est. of Williams*, 366 N.C. at 199 (“Nevertheless, governmental immunity is not without limit.”); N.C.G.S. § 153A-435 (2023). Governmental immunity does not apply when the municipality or its agents engage in proprietary functions rather than governmental functions. *Est. of Williams*, 366 N.C. at 199. Under Section 153A-435 of our General Statutes, governmental immunity can be waived by the purchase of liability insurance. N.C.G.S. § 153A-435 (2023). However, governmental immunity still applies despite the purchase of insurance under Section 153A-435 if the policy contains a provision retaining governmental immunity. *Patrick v. Wake Cnty. Dept. of Hum. Servs.*, 188 N.C. App. 592, 596 (2008).

Generally, public officials benefit from public official immunity, which protects them in their individual capacity from liability in ordinary negligence suits. *Bartley v. City of High Point*, 381 N.C. 287, 294 (2022). Law enforcement officers, sheriffs, and their deputies engaged in performance of their duties as public officials all have public official immunity. *Id.* at 295. However, public official immunity does not apply to an official when her action is “(1) outside the scope of official authority, (2) done

with malice, or (3) corrupt.” *Id.* at 294 (citations and internal marks omitted).

Here, Appellants contend that they are protected from suit by governmental immunity in their official capacity and public official immunity in their individual capacity. Plaintiff has conceded in his brief that Appellants are protected by governmental immunity in their official capacities and that the claims against Sheriff Wright in his individual capacity should have been dismissed. We agree.

Plaintiff, however, contests whether Deputy Hawk, in her individual capacity, benefits from public official immunity. Because Plaintiff does not allege corruption or malice, the only possible exception to public official immunity would be that Deputy Hawk was acting outside of and beyond the scope of her duties.

Even viewing the pleadings liberally, Plaintiff does not sufficiently allege—nor allege at all—that Deputy Hawk was acting outside of or beyond the scope of her duties. *See Bartley*, 381 N.C. at 295. In fact, Plaintiff specifically alleged only that Deputy Hawk was acting *within* the scope of her duties to support his allegation of respondeat superior against Sheriff Wright. *Estes v. Comstock Homebuilding Cos., Inc.*, 195. N.C. App. 536, 540 (2009) (“[U]nder a theory of respondeat superior . . . the neglect or wrong of the servant, employee, or agent [must be] done *in the course of his employment or in the scope of his authority*.”). Accordingly, we conclude that the trial court erred by not dismissing Plaintiff’s claims against Deputy Hawk in her individual capacity.

### III. Conclusion

GRONLUND V. HAWK

*Opinion of the Court*

We affirm the portion of the trial court's order dismissing Plaintiff's claims against the Sheriff's Office and Defendant Grier. We reverse the portion of the trial court's order denying the motion to dismiss as to Appellants and remand with instructions to dismiss Plaintiff's claims against the Appellants. We also remand for further proceedings on Plaintiff's claims that are not subject to the trial court's order or this appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Panel consisting of Chief Judge DILLON and Judges WOOD and STADING.

Report per Rule 30(e).