First District Appellate Court Rejects Defense Argument That Gym Teacher And School District Are Immune from Liability under Section 2-201 of the Illinois Tort Immunity Act

Amundsen Davis Muncipal Law Alert
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Plaintiff Evan Barr filed a personal injury complaint against Defendants Laurel Cunningham (a physical education teacher) and Township High School District 211 alleging willful and wanton misconduct for failing to provide protective eyewear during a floor hockey game that resulted in Barr's eye injury. The trial court granted Defendants' motion for a directed verdict, finding that Barr had failed to present evidence of willful and wanton conduct sufficient to overcome Defendants' immunity under Section 3-108 of the Local Government and Governmental Employees Tort Immunity Act (the Act).

On appeal, the Plaintiff argued that whether or not Cunningham's conduct was willful and wanton was a question for the jury, not the trial court. The First District Appellate Court agreed with the Plaintiff, following the standard set forth in *Pedrick v. Peoria & Eastern R.R.Co.*, 37 Ill.2d 494, 510 (1967) and further finding that Section 2-201 of the Act did not immunize the Defendants from Plaintiff's claims.

Factually, Cunningham would allow students to play floor hockey during physical education class and took the precautions of limiting games to only 12 players, using plastic rather than wooden sticks, using a "safety" ball that flattened when stepped on and prohibiting high-sticking, fighting, checking and lifting the ball with the stick – all in an effort to ensure safety. However, Cunningham did not mandate the use of goggles, even when goggles where available in the gym for use during floor hockey. Additionally, the school district had no stated policy regarding student safety in physical education classes and school district leadership admitted that Cunningham had discretion as to how to teach her class. School district leadership also admitted that they did not provide teachers with guidelines on how to teach sports such as floor hockey.

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Section 2-201 provides as follows:

> *"Except where otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of discretion even though abused."*

The First District Appellate Court found that the jury could have found that Cunningham's misconduct was willful and wanton, notwithstanding that the jury could have also found otherwise. In light of the *Pedrick* standard, the Appellate Court reversed and remanded the case back to the trial court for a new trial on the merits of Barr's claim. The Appellate Court, in its opinion, stated that it determined that the evidence did not demonstrate that Cunningham's omission resulted from a policy determination and therefore, the Defendants were not immune from Barr's claim under Section 2-201 of the Act.

This case is important because the analysis provided by the appellate court focused on whether the actions or omissions of the employee were driven by a "policy" determination. The outcome of this case demonstrates the importance of school districts and other entities subject to the Act to have sound policies in place which govern employee conduct and limit opportunities for employees to use their own discretion, particularly on issues related to student safety.

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