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IN THE COURT OF APPEALS OF INDIANA

S.E., Minor Child, By Next Friend, Katherine Danley Glaser, and Katherine Danley Glaser
Appellant-Petitioner,

v.

City of Carmel, Indiana,
Appellee-Respondent.

November 22, 2022

Court of Appeals Cause No. 22A-CT-520

Appeal from the Hamilton Superior Court

The Honorable David Najjar, Judge

Trial Court Case No. 29D05-1711-CT-10750

Bradford, Chief Judge.

Case Summary

[1] In 2017, S.E. attended a summer camp hosted by the Carmel/Clay Department of Parks and Recreation ("the Parks Department"). While there, S.E. alleged that another child attending the Parks Department's summer camp had harassed her and had committed pseudo-sexual assault against her. That fall, Katherine Danley Glaser ("Mother") sued the City of Carmel ("City") on her and S.E.'s behalf alleging damages to S.E., and the City eventually sought summary judgment. In awarding the City summary judgment in February of 2022, the trial court determined that: (1) the City is a separate political subdivision from the Parks Department; (2) the officers, agents, and employees of the City committed none of the alleged negligent acts; and (3) the alleged acts occurred at a school not owned or operated by the City. On appeal, Mother raises two issues which we restate as one: whether the Parks Department and the City are the same legal entity for purposes of the Indiana Tort Claims Act ("ITCA"). Mother argues that they are and therefore the City should be liable for the acts or omissions of the Parks Department. We disagree and affirm the trial court's entry of summary judgment in favor of the City.

Facts and Procedural History

[2] In 2017, S.E. attended a summer camp organized and administered by the Parks Department. Registration and payment for this camp was submitted through the Parks Department's website, staff, or community center. Eventually, S.E. stopped attending camp after allegedly experiencing "various

forms of bullying and/or pseudo sexual assault" by at least one other child between June and July. Appellee's App. Vol. II pp. 85–86. At some point during that time, the other child had allegedly "pushed [S.E.]'s head close to the other student's genitalia […] then allegedly pulled [S.E.]'s pants down […] [and] 'smacked [S.E.'s] private parts.'" Appellee's Br. pp. 16–17 (quoting Appellee's App. Vol. II p. 202). On two other occasions, another child had allegedly watched S.E. go to the bathroom.

[3] In November of 2017, Mother filed a complaint, seeking damages from the City for its and its employees' negligence in the care, control, and supervision of S.E. and the other children. The City eventually moved for summary judgment in 2019, arguing that it did not owe a duty to a Parks Department guest. In February of 2020, the trial court denied the City's summary judgment motion on that issue.

[4] Discovery before and after this summary judgment motion established the following facts: The City is governed by its city council. The Parks Department is governed by a separate board, the Carmel/Clay Board of Parks and Recreation, established in an interlocal agreement between the City and Clay Township of Hamilton County. The City's mayor and Clay Township each appoint four members to this board, and the Carmel/Clay School Board appoints one.

[5] Throughout 2017, the City budgeted millions of dollars to fund the Parks Department; however, the funds budgeted for the Parks Department "are kept

separately from the City['s] […] General Fund" and "are not commingled and non-reverting." Appellee's App. Vol. III p. 2. Further, the City and the Parks Department each maintain their own records and host their own public meetings. The City's Director of Human Resources, Barbara Lamb, explained that the two entities also "have separate tax identification numbers and separate human resource departments." Appellee's App. Vol. III p. 7.

[6] According to Lamb, the Parks Department hosted the summer camp at which S.E. alleged these incidents occurred. Lamb further explained that "[n]one of the individuals" who worked at that camp, and none of the individuals involved in the Parks Department management, "were employees of the City […] nor did they report to any" City employee. Appellee's App. Vol. III p. 8–9. The personnel to whom S.E. and Mother reported the alleged incidents were neither City employees nor reported to City employees. Additionally, James Crider, the Director of Administration for the City, explained that the City "does not own the Creekside Middle School property" where the camp was held. Appellee's App. Vol. III p. 4.

[7] After this additional discovery, in June of 2021, the City moved for summary judgment on the basis that it is immune from suit under the ITCA as a matter of law. In February of 2022, the trial court held a hearing on the City's motion after which it granted the City summary judgment. In doing so, the trial court determined that there were

> no genuine issues of material fact with respect to the following issues: 1) that Carmel is a separate political subdivision from the

> [Park's Department]; 2) that no alleged negligent acts were committed by officers, agents, or employees of [the City]; and 3) the alleged acts were committed at a school which is not owned or operated by [the City].

Appellee's App. Vol. II p. 99. Accordingly, the trial court concluded that the City could not be held liable under the ITCA for the negligent acts or omissions of another political subdivision. Finally, the trial court concluded that the City should not be held liable for the acts of Parks Department employees as a result of the City's mayor selecting members of the Parks Department's board, or the City's funding arrangements for the Parks Department.

Discussion and Decision

[8] When we review a grant of summary judgment, "our standard of review is the same as that of the trial court." *Webb v. City of Carmel*, 101 N.E.3d 850, 860 (Ind. Ct. App. 2018) (citing *FLM, LLC v. Cincinnati Ins. Co.*, 973 N.E.2d 1167, 1173 (Ind. Ct. App. 2012), *trans. denied*). In other words, our standard of review is de novo. *Id*. We will affirm a grant of summary judgment "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *William v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). "We view the pleadings and designated materials in the light most favorable to the non-moving party[,]" and construe "all facts and reasonable inferences from those facts […] in favor of the non-moving party." *Webb*, 101 N.E.3d at 860 (citing *FLM*, 973 N.E.2d at 1173)).

[9] Importantly, a "trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous." *Henderson v. Reid Hosp. and Healthcare Servs*. 17 N.E.3d 311, 315 (Ind. Ct. App. 2014), *trans. denied*. While we are not bound by the trial court's findings and conclusions, "they offer insight into the rationale for the trial court's judgment and facilitate appellate review." *Id*.

[10] Under the ITCA, "a governmental entity or an employee acting within the scope of the employee's employment is not liable for the following: […] (10) the act or omission of anyone other than the governmental entity or the governmental entity's employee." Ind. Code § 34-13-3-3(a)(10). For her part, Mother argues that the designated evidence shows that the City and the Parks Department are not separate political subdivisions or municipal corporations for purposes of the ITCA for two reasons: (1) the interlocal agreement does not establish the City and the Parks Departments as separate entities and (2) the Parks Department is not a municipal corporation under Indiana law and as defined by the ITCA. As a result, Mother argues that the City should be held liable for the Parks Department's alleged negligence.

[11] In support of her argument, Mother asserts that the interlocal agreement fails to establish the Parks Department as a separate entity based on the interlocal agreement. We disagree. The interlocal agreement "determined that the best interests of the citizens and taxpayers […] would be served by administering the park and recreational needs of their respective territories through a joint board."

Appellant's App. Vol. II p. 24. Further, the interlocal agreement gives the Parks Department the power to "sue and be sued collectively by or in its legal name, as 'the Carmel/Clay Board of Parks and Recreation,' with service of process being had upon the president of the Joint Board." Appellant's App. Vol. II p. 31.

[12] Next, Mother asserts that the Parks Department is not a municipal corporation under Indiana law and the ITCA. Yet, Indiana statutes and case law have recognized that parks boards are distinct municipal corporations and political subdivisions. For example, in *Joint County Park Board of Ripley, Dearborn and Decatur Counties v. Stegemoller et al.*, the named counties created a joint parks board and sought to condemn Stegemoller's land for a park. 228 Ind. 103,108–09, 88 N.E.2d 686, 688 (1949). While Stegemoller argued that the joint board "had no legal existence as an entity[,]" the Indiana Supreme Court held that "[n]o particular form of words is necessary to constitute a municipal corporation" and our "legislature […] [has] authorized the creation of a new municipal corporation for park purposes[,]" thereby acknowledging parks boards as municipal corporations. *Id*. at 114, 88 N.E.2d at 690.

[13] We reached a similar conclusion in *Taylor v. State*, 663 N.E.2d 213, 215 (Ind. Ct. App. 1996), *trans. denied*. In that case, "the Mayor of Evansville appointed Taylor as the Director of the … Community Center[,]" which was "subject to the authority of the […] Division of Parks and Recreation." *Id*. In holding that Taylor was a public officer, we concluded that "the Community Center qualifies, under I.C. 36-1-2-10, as a municipal corporation because it is a

separate local governmental entity *that may sue or be sued*. Therefore, the Center is also a political subdivision." *Id*. at 216 (emphasis added).

[14] Perhaps most notably, in *Webb*, 101 N.E.3d 850, we considered the "same Interlocal Agreement at issue here." Appellant's Br. p. 13. In that case, a guest fell while walking on bleachers in the community center and sued the City, the Parks Department, and the Carmel Clay Parks Building Corporation. *Webb,* 101 N.E.3d at 850. There, we concluded that the "Park Board operates as a political subdivision on its own behalf and, pursuant to Article IV, Section 4.2(i) of the Interlocal Agreement, has the right to sue and be sued by or in its legal name as the 'Carmel/Clay Board of Parks and Recreation.'" *Id*. at 855 (footnote omitted); *see* Appellant's App. Vol. II p. 31.

[15] Consequently, we have little trouble concluding that the City and the Parks Department are separate entities for purposes of the ITCA. For instance, the interlocal agreement itself provides that the Parks Department may "sue and be sued collectively by or in its legal name." Appellant's App. Vol. II p. 31. In fact, Mother admits in her 2019 summary judgment briefing that, under Indiana Code section 36-10-3-11(a)(11), the Parks Department "**may sue and be sued**." Appellee's App. Vol. II p. 157 (emphasis in original). Like the community center in *Taylor*, the Parks Department is a municipal corporation, or "separate governmental entity that may sue or be sued" under Indiana Code section 36-1-2-10, which, in turn, means that it is a political subdivision. *See* Ind. Code § 36-1-2-10.

[16] However, Mother argues that the ITCA specifically "contains no language […] which creates a municipal corporation" for a parks board. Appellant's Br. p. 17. Even though the ITCA in Title 34 does not qualify the Parks Department as a political subdivision, Title 36 does. As discussed above, a municipal corporation is, among other specifically-listed organizations, a "separate governmental entity *that may sue or be sued*." Ind. Code § 36-1-2-10 (emphasis added). Importantly, we do not examine statutes through a keyhole—we construe them with their companions to create a harmonious statutory scheme. *Orndorff v. New Albany Hous. Auth.*, 843 N.E.2d 592, 595 (Ind. Ct. App. 2006) (citing *Jones v. State*, 569 N.E.2d 975, 978 (Ind. Ct. App. 1991)), *trans. denied*. Therefore, if we are facing tort claims against governmental entities under the ITCA in Title 34, we must also consider Title 36 on local government. *Id*. In doing so, it is clear that the Parks Department qualifies as a municipal corporation. Moreover, our case law has already determined that the very interlocal agreement at issue in this case had established the Parks Department as a separate political subdivision. *See Webb*, 101 N.E.3d. at 855.

[17] Based on our conclusion that the City and the Parks Department are separate entities for purposes of the ITCA, we further conclude that the trial court properly determined that the City "cannot be held liable under the [ITCA] for the negligent acts or omissions of other political subdivisions." Appellee's App. Vol. II p. 99. The ITCA grants immunity when "the alleged basis of governmental entity liability is the act of omission of a third person." *Hinshaw v. Bd. of Comm'rs of Jay Cnty.*, 611 N.E.2d 637, 640 (Ind. 1993). Here, Mother

alleges that specific summer camp personnel were negligent; however, "[n]one of the individuals" who worked at the Parks Department's camp, and none of the individuals involved in the Parks Department's management, "were employees of the City […] nor did they report to any" City employee. Appellee's App. Vol. III pp. 8–9. Further, the City "does not own the Creekside Middle School property" where the camp was held. Appellee's App. Vol. III p. 4. Put simply, the negligent acts or omissions of which Mother complains were not allegedly committed by the City, but by Parks Department employees; therefore, the City enjoys immunity under the ITCA. *See* Ind. Code § 34-13-3-3(a)(10).

[18] In a last-ditch effort to persuade us to assign liability to the City, Mother argues that even if the City and Parks Department are separate entities, the City is effectively the "alter ego" of the Parks Department. Appellant's Br. p. 18. Specifically, Mother argues that the City and the Parks Department's "'relationship is sufficiently direct' […] such that Parks is not a separate political subdivision or municipal corporation distinct from [the City]." Appellant's Br. p. 7 (quoting *Schon v. Frantz*, 156 N.E.3d 692, 701 (Ind. Ct. App. 2020)). In doing so, Mother points out that "[w]hether it be the hiring of the Parks Director, the public funding by [the City], or the approval of budgets and Parks planning, [the City] is the defacto party which controls" the Parks Department. Appellant's Br. pp. 18–19.

[19] We are unpersuaded by Mother's argument because *Schon* is readily distinguished from this case. In that case, "Schon was allegedly injured at a

concert at the Allen County War Memorial Coliseum[,]" which "is owned by the Allen County Board of Commissioners […] and is operated by Allen County through the Allen County War Memorial Coliseum Board of Trustees." *Schon*, 156 N.E.3d at 694–95. This Court held that "Allen County, acting through its Commissioners, established the Coliseum and is operating it through the Trustees pursuant to statute. Significantly, the Trustees do not operate completely independently of the Commissioners but are answerable to them. The Commissioners own the Coliseum." *Id*. at 701. Unlike Allen County in *Schon*, the City "does not own […] operate or manage Creekside Middle School." Appellee's App. Vol. III p. 4. Further, the City does not employ or supervise any of the Parks Department employees whom Mother alleges were negligent. Further still, the Allen County commissioners had the power to appoint all trustees to the board; here, the City only has the power to appoint a minority of the Parks Department board. Therefore, we cannot say that the City controls the Parks Department such that they are the same entity.

[20] In terms of funding, the record shows that, while the interlocal agreement empowers the City's fiscal officer to disperse Parks Department funds, it also provides that she may do so *only* for "claims approved by the Joint Board." Appellee's App. Vol. II p. 126. Moreover, both the City and Clay Township must approve proposed Park Department's budgets. Mother further argues that the City even has "an automatic 'veto' of the proposed budget […] if a resolution is not passed within thirty (30) days." Appellant's Br. p. 10. While that is true, the interlocal agreement gives Clay Township the same veto power.

Thus, we are at a loss as to how the City and Clay Township exercising the same budgetary powers makes the Parks Department and the City the same entity for ITCA purposes.

[21] In conclusion, we agree with the trial court that the record shows no genuine issues of material fact that the City and the Parks Department are separate political subdivisions under the interlocal agreement's terms, state statutes, and our case law. As a result, the City cannot be held liable for the negligent acts or omissions of the Parks Department or its employees pursuant to Indiana Code section 34-13-3-3(a)(10).

[22] The judgment of the trial court is affirmed.

Vaidik, J., and Pyle, J., concur.