

12-0614

IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

DREAMA BOWDEN, as Administratrix  
of the Estate of Lowell Bowden,  
Plaintiff,

v.

CIVIL ACTION NO.: 11-C-18

JUSTIN BLANKENSHIP, an individual;  
KIM BLANKENSHIP, an individual;  
ANNA HUGHES, an individual;  
MOSE CHRISTIAN, an individual;  
MONROE COUNTY COMMISSION, a  
Political Subdivision; PATRICIA GREEN,  
Individually and in her official capacity;  
and AMERICAN MODERN HOME  
INSURANCE COMPANY, an Ohio  
Corporation,  
Defendants.

FILED IN MONROE COUNTY  
CIRCUIT COURT  
2012 MAR 29 PM 3:09

ORDER-GRANTING MOTION TO DISMISS

This matter came before the Court on the 5<sup>th</sup> day of February, 2012, on a Motion to Dismiss, filed by the Monroe County Commission and Patricia Green, pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*, for failure to state a claim upon which relief can be granted. The Defendants, Monroe County Commission and Patricia Green, appeared by counsel, James Brown, of Pullin, Fowler, Flanagan, Brown, and Poe, PLLC; and the Plaintiff appeared by counsel Travis A. Griffith, of Olivio and Griffith, PLLC.

Although not participating in the Motion, the Defendant, American Modern Home Insurance Company, appeared by counsel, Joanna I. Tabit, of Steptoe and Johnson, PLLC, the Defendant, Justin Blankenship, appeared by counsel, Amanda J. Gardner, of Flaherty, Sensabaugh, and Bonasso, PLLC, and the Defendant, Kim Blankenship, appeared by counsel Patricia M. Nidiffer, of Jackson and Kelly, PLLC. Defendants Anna Hughes and Mose Christian

did not participate in the hearing, as an Order Granting Default Judgment was entered against them on November 9, 2011.

The Court has considered the Motion, the Plaintiff's response, the supporting memoranda of law, heard the arguments of counsel, and reviewed pertinent legal authorities. As a result of these deliberations, the Court has concluded the Defendant's motion to dismiss should be granted.

The Plaintiff's action against the Defendants, Monroe County Commission and Patricia Green, asserts several claims. The Monroe County Commission and Patricia Green's Motion to Dismiss seeks the dismissal of all of those claims. Defendants assert in their Memorandum of Law supporting their Motion to Dismiss, that liability against a political subdivision cannot be based upon the alleged breach of a duty owed to the public at large. Moreover, the Defendants allege that there is specific statutory immunity, namely the Governmental Tort Claims and Insurance Reform Act, for the County Commission as well as its employee, as they are immune against claims of liability allegedly caused by an act or omission in connection with a governmental or proprietary function, such as is alleged by the Plaintiff. After having considered the matter, this Court has concluded that the Defendant's Motion to Dismiss should be granted.

Based on the foregoing, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Motion to Dismiss filed by the Monroe County Commission and Patricia Green is **GRANTED**, and they are dismissed as parties to the above styled action.
2. The Clerk is directed to provide a copy of this Order to counsel of record and to any party appearing *pro se* at their last known address.

Dated March 29, 2012.

  
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**ROBERT A. IRONS, CIRCUIT JUDGE**

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DREAMA BOWDEN, as Administratrix  
of the Estate of Lowell Bowden,  
Plaintiff,

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CIVIL ACTION NO.: 11-C-18

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MOSE CHRISTIAN, an individual;  
MONROE COUNTY COMMISSION, a  
Political Subdivision; PATRICIA GREEN,  
Individually and in her official capacity;  
and AMERICAN MODERN HOME  
INSURANCE COMPANY, an Ohio  
Corporation,  
Defendants.

FILED IN MONROE COUNTY  
CIRCUIT COURT  
2012 APR -2 PM 2:10

ORDER-GRANTING MOTION TO DISMISS

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Although not participating in the Motion, the Defendant, American Modern Home Insurance Company, appeared by counsel, Joanna I. Tabit, of Steptoe and Johnson, PLLC, the Defendant, Justin Blankenship, appeared by counsel, Amanda J. Gardner, of Flaherty, Sensabaugh, and Bonasso, PLLC, and the Defendant, Kim Blankenship, appeared by counsel Patricia M. Nidiffer, of Jackson and Kelly, PLLC. Defendants Anna Hughes and Mose Christian did not participate in the hearing, as an Order Granting Default Judgment was entered against them on November 9, 2011.

The Court has considered the Motion, the Plaintiff's response, the supporting memoranda of law, heard the arguments of counsel, and reviewed pertinent legal authorities. As a result of these deliberations, the Court has concluded the Defendant's motion to dismiss should be granted.

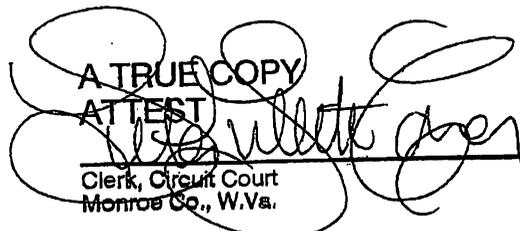
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Based on the foregoing, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Motion to Dismiss filed by the Monroe County Commission and Patricia Green is **GRANTED**, and they are dismissed as parties to the above styled action. This is a final order pursuant to Rule 54 of the West Virginia Rules of Civil Procedure.
2. The Clerk is directed to provide a copy of this Order to counsel of record and to any party appearing *pro se* at their last known address.

Dated March 29, 2012.

  
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**ROBERT A. IRONS, CIRCUIT JUDGE**

  
A TRUE COPY  
ATTEST  
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Clerk, Circuit Court  
Monroe Co., W.Va.