

12-0632

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

JOSEPH WAYNE BELCHER,

Plaintiff,

v.

Civil Action No.: 11-C-333
Honorable Michael Thornsbery

JOSEPH E. JACKSON, and WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS,

Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

ADMITTED TO PROCEED
2012 APR 13 AM 10:00
MINGO COUNTY
CIRCUIT CLERK

This matter is currently before the Court on the Defendants' Motion For Summary Judgment. A hearing was held on the matter on the 2nd day of April 2012, at which the parties appeared as follows: the Plaintiff through counsel, Stephen New, and the Defendants, through counsel, Gary Pullin. After thorough review of the Motion, the oral arguments relating thereto, the applicable legal authorities, and all evidence of record, the Court FINDS that the Defendants' Motion To Alter Or Amend Judgment should be DENIED. Thus, the Motion should be DENIED based upon the following Finding Of Fact And Conclusions Of Law, to wit:

Findings Of Fact

1. This case stems from flooding which occurred in West Virginia in May 2009. On May 9, 2009, then-Governor Joe Manchin, III, declared a state of emergency for several West Virginia counties, including Mingo. The state of emergency was initially from May 9, 2009, to June 10, 2009, but was later extended through July 10, 2009.
2. This action was filed relating to an automobile accident with Defendant Joseph Jackson, which occurred on June 23, 2009, in Gilbert, West Virginia. At the time, the Defendant was operating a dump truck near U.S. Route 52/2. At the time of the accident, Mr.

Jackson was working as an emergency service worker in an effort to remedy flood damage. The Plaintiff claims that Defendant Jackson was negligent in his operation of the vehicle, and that, as owners of the vehicle, the West Virginia Department of Transportation, Division of Highways is also liable.

3. On December 1, 2011, the Court entered an Order Directing Parties To Submit An Agreed Order Certifying Question.
4. On January 24, 2012, the Defendants then mailed a letter requesting a decision on the Motion, as it is a necessity prior to certifying a question.
5. Subsequently, the Court entered an order denying the Defendants' Motion For Summary Judgment. Furthermore, the Court noted that it no longer found it necessary to certify the question.
6. The Defendants' now file a Motion To Alter Or Amend Judgment requesting that the Court certify the following question to the West Virginia Supreme Court Of Appeals: "Does the Court's ruling in *Pittsburgh Elevator Company v. West Virginia Board of Regents*, 117 W.Va. 743, 310 S.E.2d[sic] 675 (1983) preclude state agencies and political subdivisions from asserting the statutory immunity granted under W.Va. Code § 15-5-11(a)?"
7. In its order denying the Motion For Summary Judgment the Court stated that

The Court FINDS that the decision in *Pittsburgh Elevator* would qualify as an exception to the statutory immunity of the above-cited statute under the "any other law" exception. While the case of *Pittsburgh Elevator* dealt with constitutional immunity, it is logical to assume that the West Virginia Supreme Court of Appeal would extend it to statutory immunity. Additionally, by the language of West Virginia Code § 15-5-11, in which it carves out the possibility of exceptions, it does not appear that the statute intended to close the door on all suits against the State.

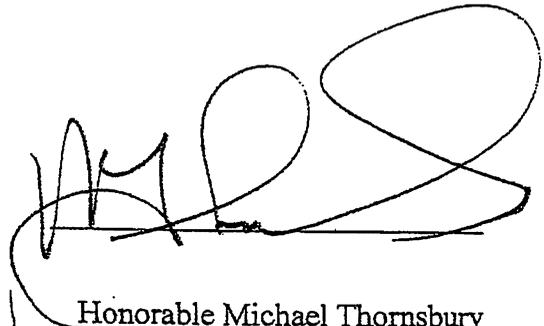
8. The Court stands by the aforementioned language and its decision to deny the Motion For Summary Judgment and not certify the question.
9. Thus, the Motion To Alter Or Amend Judgment is hereby DENIED.

Judgment

Wherefore, based on the foregoing Findings Of Fact And Conclusions Of Law, the Court hereby DENIES the Motion To Alter Or Amend Judgment.

The Clerk is DIRECTED to send an attested copy of this Order to all counsel of record.

Entered: this the 13th day of April 2012.



Honorable Michael Thornsby

Chief Judge, 30th Judicial Circuit

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CIRCUIT CLERK, MINGO COUNTY, W.VA.