

No. 32862 – Jeremy Bender, Travis Sturm, Jason Gregory, and Jason Brooks, Plaintiffs Below; Jeremy Bender, Appellant v. Donald Ray Glendenning, Jr., and The Webster County Board of Education, Defendants Below, Appellees and The Webster County Board of Education, Defendant and Third-Party Plaintiff Below, Appellee v. Donald Ray Glendenning, Jr., Third-Party Defendant Below, Appellee, and Donald Ray Glendenning, Jr., Fourth-Party Plaintiff Below, Appellee v. Continental Casualty Company, a CNA company, Fourth-Party Defendant Below, Appellee

No. 32863 – Jeremy Bender, Travis Sturm, Jason Gregory, and Jason Brooks, Plaintiffs Below; Travis Sturm, Jason Brooks and Jason Gregory, Appellants v. Donald Ray Glendenning, Jr., and The Webster County Board of Education, Defendants Below, Appellees and The Webster County Board of Education, Defendant and Third-Party Plaintiff Below, Appellee v. Donald Ray Glendenning, Jr., Third-Party Defendant Below, Appellee and Donald Ray Glendenning, Jr., Fourth-Party Plaintiff Below, Appellee v. Continental Casualty Company, a CNA company, Fourth-Party Defendant Below, Appellee

FILED

June 22, 2006

released at 10:00 a.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I would have affirmed the circuit court’s summary judgment order in favor of Continental Casualty Company because I do not believe that the Legislature intended for county boards of education to pay damages arising from the sex crimes of teachers.

The enabling statute under which the school board below was authorized to purchase liability insurance, W.Va. Code § 29-12-5a(b) (2005), states that insurance provided by the Board of Risk and Insurance Management shall cover claims “if, at the time of the alleged injury, the teacher . . . was acting in the discharge of his or her duties, within the scope of his or her office[.]” Also, the Governmental Tort Claims and Insurance Reform Act, W.Va. Code §§ 29-12A-1, *et seq.*, makes it abundantly clear that school boards are

liable only for acts of their employees performed in the scope of their employment, and not for acts that are malicious, in bad faith, or otherwise outside the scope of employment. Sexual assault is not a negligent act, and it is not within the scope of a teacher's employment.

The majority, however, reads W.Va. Code § 29-12A-9(a) to indicate that when a policy of insurance provides coverage for a political subdivision, the terms of such insurance contract determine the rights and responsibilities of the insurer and its insureds. I believe that this interpretation of W.Va. Code § 29-12A-9(a) is wrong. Significantly, it conflicts with W.Va. Code § 29-12A-16(d) (2003) which provides that “[t]he purchase of liability insurance . . . by a political subdivision does not constitute a waiver of any immunity it may have pursuant to [the Tort Claims Act] or any defense of the political subdivision or its employees.” Further, I do not believe that we should read W.Va. Code § 29-12A-9(a) in a manner that effectively voids all other provisions of the Tort Claims Act because to do so violates this Court's rules of construction.

Accordingly, for the reasons stated above, I dissent.