

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAMI SCHLACK,
Appellant,
vs.
ECONOMIC OPPORTUNITY BOARD
OF CLARK COUNTY, A NEVADA
CORPORATION AND THOSBY JAMES
CHAVIS,
Respondents.

No. 55453

FILED

SEP 19 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order of summary judgment applying the governmental damages cap in a tort action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Tami Schlack was injured in a car accident caused by the negligent driving of an employee of respondent Economic Opportunity Board of Clark County's (EOB) Transportation Division. Schlack sued and the parties agreed as to liability. However, the EOB asserted that it was a political subdivision of Nevada and, under NRS 41.035, entitled to a cap on tort damages of \$75,000. The parties stipulated to a judgment of \$75,000 and the EOB sought summary judgment to establish that damages were capped at that amount. The district court granted summary judgment for the EOB and Schlack appealed.

We review a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no

genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” Id. at 731, 121 P.3d at 1031. “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” Id. “The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.” Id.

Nevada law provides each political subdivision with a cap of \$75,000 for tort damages arising out of any act “within the scope of [its] public duties.”¹ NRS 41.035. NRS 41.0305 grants political subdivision status to any entity that is eligible for federal Community Services Block Grant (CSBG) funding under 42 U.S.C. § 9902 and was a community action agency under 42 U.S.C. § 2790 before that section was repealed. Schlack concedes that the EOB was a political subdivision at the time of her accident.² NRS 41.035.

Despite this concession, Schlack stresses that the statutory cap on damages is inapplicable if the Transportation Division of the EOB was, at the time of the accident, performing a function that was funded by

¹Schlack does not argue that the EOB was acting outside the scope of its duties, and it could hardly be questioned that transporting passengers home from the Salvation Army Adult Daycare Center falls outside its duties.

²In her brief, Schlack initially challenged whether the EOB provided evidence of its political subdivision status sufficient to support summary judgment. However, at oral argument, Schlack conceded that the EOB was, at the time of the accident, a political subdivision as defined in NRS 41.0305 and used in NRS 41.0305 to 41.039.

sources other than Community Services Block Grants.³ There is a factual dispute as to the source of the Transportation Division's funding. Deposition testimony from a former EOB employee indicates that she believed the Transportation Division functioned from grant funding. On the other hand, Schlack argues that a contract between the Transportation Division and a separate, for-profit entity is evidence that it functioned in part from non-CSBG funds. Schlack argues that this factual dispute precludes summary judgment and correctly points out that an entity may be a political subdivision for some purposes but not others. See University System v. DR Partners, 117 Nev. 195, 204 n.25, 18 P.3d 1042, 1048 n.25 (2001) (Board of Regents and the state university are political subdivisions in the specialized context of securities law).

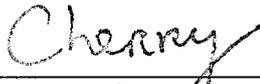
We conclude that resolution of this particular factual dispute is of no legal consequence and, therefore, the district court correctly granted summary judgment. See Wood, 121 Nev. at 731, 121 P.3d at 1031. Schlack cites no authority to show that the factual dispute over the Transportation Division's funding affects the EOB's status as an eligible entity or its entitlement to a cap on damages. Nevada limits to \$75,000

³Schlack also argues that the Transportation Division may be a separate corporate entity from the EOB, which would sever the Transportation Division's status as an eligible entity. In Greater Hammond Cmty. Servs. v. Mutka, 735 N.E.2d 780, 784-85 (Ind. 2000), the court held that a separate corporate entity that had contracted to provide transportation services for a community action agency could not huddle under the community action agency's corporate veil to take advantage of its damages cap. Schlack's argument here is unavailing, however, because she provided no evidence that the Transportation Division is a separate corporate entity and the Transportation Division's charter states that it "operates under the Economic Opportunity Board of Clark County."

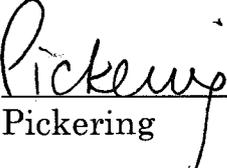
awards for damages against “any political subdivision” and creates no requirement that eligibility for the damages cap be traced to CSBG funds. NRS 41.035. Furthermore, the Community Service Block Grant program requires eligible entities to coordinate the use of CSBG funds with other private and public resources to maximize their benefit. See 42 U.S.C. § 9908(b)(3)(C); see also Delta Found., Inc. v. United States, 303 F.3d 551 (5th Cir. 2002) (discussing an agreement between the Secretary of Health and Human Services and a community action agency that was the parent of two for-profit companies into which it diverted funds). Imposing liability on the EOB in excess of NRS 41.035’s cap because of the source of funding would run counter to the statute’s purpose. See County of Clark v. Upchurch, 114 Nev. 749, 756, 961 P.2d 754, 758-59 (1998) (noting that cap on damages is meant to protect public funds from “devastating judgments”). Finally, a rule requiring litigants and courts to trace the source of funds to ascertain whether an entity is eligible for a statutory cap on damages would prove unwieldy and impractical.

We have considered all of Schlack’s arguments and we are convinced that the district court properly entered the order of summary judgment in favor of the EOB. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
John H. Sarb
Robert E. Marshall
Law Office of Gary Sinkeldam
Sterling Law, LLC
Eighth District Court Clerk