

STATE OF MAINE

KENNEBEC, ss.

SHANE L. WOOD and
REBECCA E. WOOD,

Plaintiffs

v.

STATE OF MAINE and
COUNTY OF KENNEBEC,

Defendants

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-02-187

DHM-KEN-3/2/2004

DECISION AND ORDER

DONALD L. GARDNER
LAW OFFICE

APR 23 2004

This matter is before the court on separate motions by defendants State of Maine and Kennebec County for summary judgment. They arise out of a complaint filed as a result of the execution of a search warrant by law enforcement officers of the State of Maine and the County of Kennebec on September 25, 2000, of the plaintiffs' residence in Vassalboro. Plaintiffs claim injuries as a result of the use of excessive and unreasonable force and loss of consortium.

In response to a motion to dismiss by Kennebec County, on February 13, 2003, the court denied the County's motion to dismiss. In that motion, the court declined to find that a complaint as to the use of handcuffs and placement in a police cruiser motor vehicle provided an exception to the Maine Tort Claims Act immunity arising out of the ownership and maintenance or use of vehicles, machinery and equipment, etc. This court's order further found that, "Inasmuch as the court is satisfied that the activities alleged in plaintiffs' complaint do not bring it within the exceptions of section 8104-A, the applicability of section 8104-B is moot." That section referred to immunity for discretionary actions.

The motion to dismiss was denied because the plaintiffs in their complaint did not address the provisions of 14 M.R.S.A. § 8116 on the issue of waiver of governmental immunity by the acquisition of insurance for liability against claims. Since the court was limited to the four corners of the complaint, it could make no determination whether or not that waiver had taken place.

In Kennebec County's statement of material facts in support of its motion for summary judgment, it is undisputed that Kennebec County is a named member of Maine County Commissioners Association self-funded risk management pool which provides a coverage document specifically excluding any coverage for any cause of action seeking tort damages for which the county is immune pursuant to the Tort Claims Act and limits coverage to those areas for which governmental immunity is expressly waived by the Tort Claims Act. Under these circumstances, the court is held to find as a matter of law that the Kennebec County defendant is entitled to summary judgment.

Defendant State of Maine also alludes to this court's order of February 13th as to its findings of fact and presents the same argument as Kennebec County, to wit, that the action does not come within an exception to the immunity provided by the Maine Torts Claims Act and the State of Maine is self-insured through the Division of State Risk Management wherein coverage is "limited to those specific instances where immunity is waived pursuant to 14 M.R.S.A. § 8104-A." For this reason, the State of Maine is also entitled to summary judgment.¹

¹ The last sentence of the argument by the State of Maine in its memorandum in support of its motion states, ". . . the claims asserted by the plaintiffs in this case do fall within the exceptions to immunity . . ." The court assumes this to be a typographical error missed in the proofreading process.

The entry will be:

Motion by defendant State of Maine for summary judgment is GRANTED; judgment for State of Maine on plaintiffs' complaint; motion by defendant Kennebec County for summary judgment is GRANTED; judgment for Kennebec County on plaintiffs' complaint.

Dated: March 2, 2004



Donald H. Marden
Justice, Superior Court

SHANE L WOOD - PLAINTIFF

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SUPERIOR COURT
KENNEBEC, ss.
Docket No. AUGSC-CV-2002-00187

DOCKET RECORD

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Filing Document: COMPLAINT

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Minor Case Type: OTHER PERSONAL INJURY TORT

Docket Events:

09/19/2002 FILING DOCUMENT - COMPLAINT FILED ON 09/19/2002

09/19/2002 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 09/19/2002
MAILED TO ATTY SANDY.

09/26/2002 Party(s): SHANE L WOOD
ATTORNEY - RETAINED ENTERED ON 09/19/2002
Plaintiff's Attorney: ROBERT E SANDY JR

Party(s): REBECCA E WOOD
ATTORNEY - RETAINED ENTERED ON 09/19/2002
Plaintiff's Attorney: ROBERT E SANDY JR