

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KIMBERLY MYERS, et al.)
)
 Plaintiffs,)
)
 v.) Case No. 10-00081-CV-W-BP
)
 BLUE SPRINGS SCHOOL DISTRICT,)
 et al.)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Blue Springs School District’s (“BSSD”) Motion for Partial Summary Judgment. (Doc. # 165). BSSD moves for summary judgment on Counts I and II on the basis of sovereign immunity. Count I is a claim for wrongful death, and Count II is a claim for negligent infliction of emotional distress. Plaintiffs have filed no response to this Motion, and the time for doing so has now passed.

A party to a lawsuit may move for summary judgment on any claim. Fed. R. Civ. P. 56(a). “Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Cole v. Homier Distrib. Co., Inc.*, 599 F.3d 856, 864 (8th Cir. 2010) (citation omitted). A party is entitled to judgment as a matter of law when sovereign immunity protects it from liability. *Cheney v. United States*, 972 F.2d 247, 248-49 (8th Cir. 1992).

Under Missouri law, public entities enjoy sovereign immunity from tort liability. Mo. Rev. Stat. § 537.600. This immunity extends to public school districts. *Boever v. Special Sch. Dist. of St. Louis Cnty.*, 296 S.W.3d 487 (Mo. Ct. App. 2009). Because BSSD is a public school

district, it enjoys sovereign immunity from tort liability. BSSD is therefore entitled to summary judgment on Counts I and II unless its immunity has been waived.

The Missouri General Assembly has expressly waived sovereign immunity in two situations: (1) where a public employee negligently operates a motor vehicle; and (2) where public property is in a dangerous condition. Mo. Rev. Stat. § 537.600.1(1)-(2); *Hensley v. Jackson Cnty.*, 227 S.W.3d 491, 494-95 (Mo. 2007). In addition, a public entity waives its sovereign immunity from a tort claim by purchasing an insurance policy providing coverage for that claim. Mo. Rev. Stat. § 537.610.1; *Moses v. Cnty. of Jefferson*, 910 S.W.2d 735, 736 (Mo. Ct. App. 1995). Under this law, BSSD's sovereign immunity has not been waived. First, Plaintiffs' claims concern bullying and other abuse their deceased son suffered while he was a BSSD student. Therefore, the express statutory waiver for claims concerning either a negligent driver or dangerous property is inapplicable. Next, the only liability insurance purchased by BSSD is a policy issued by the Missouri Public Entity Risk Management Fund ("MOPERM"). This policy provides insurance coverage only for claims concerning negligent drivers and dangerous property. *See, e.g., Moses*, 910 S.W.2d at 736 (interpreting same policy). As established above, no such claims are at issue here. As a result, BSSD's sovereign immunity has not been waived, and it is entitled to summary judgment on Counts I and II.

Accordingly, it is hereby **ORDERED** that

Defendant Blue Springs School District's Motion for Partial Summary Judgment, (Doc. # 165), is **GRANTED**. The Court hereby grants summary judgment in favor of Defendant on the claims alleged in Counts I and II of Plaintiffs' Complaint.

/s/Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATED: May 10, 2012