

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-000812-MR

ASHLAND COMMUNITY AND  
TECHNICAL COLLEGE

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
ACTION NO. 13-CI-00299

FAITH A. STEELE

APPELLEE

OPINION  
REVERSING AND REMANDING  
WITH DIRECTIONS

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BEFORE: STUMBO, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Ashland Community and Technical College (ACTC) brings this appeal from an April 26, 2013, Order of the Boyd Circuit Court denying its motion to dismiss a negligence action based upon grounds of sovereign and

governmental immunity. We reverse and remand with directions to dismiss the underlying complaint upon the basis of governmental immunity.

In 2013, Faith A. Steele filed a personal injury complaint against ACTC in the Boyd Circuit Court. In the complaint, Steele alleged that she was a student at ACTC and sustained an injury when she “stepped on broken glass hidden in the grass on ACTC’s premises.” Complaint at 1. The alleged injury occurred in April of 2012. Steele claimed that ACTC was negligent and breached its duty “to provide a reasonably safe premise for students such as Ms. Steele.” Complaint at 2. Steele sought damages for her personal injury.

ACTC filed an answer and simultaneously filed a motion to dismiss. In the motion to dismiss, ACTC argued that it was entitled to governmental immunity and, thus, was immune from Steele’s tort action. Steele filed a response and maintained that ACTC had purchased liability insurance and that the purchase of such liability insurance constituted a waiver of governmental immunity.

By order entered April 26, 2013, the circuit court denied ACTC’s motion to dismiss. Although the April 26, 2013, order was interlocutory, an appeal was filed by ACTC as permitted by *Breathitt County Board of Education v. Prater*, 292 S.W.3d 883 (Ky. 2009).

To begin, as matters outside the pleadings were presented to the circuit court and considered in the motion to dismiss, the motion is properly treated as a motion for summary judgment. Kentucky Rules of Civil Procedure (CR) 12.02. Summary judgment is proper where there exists no material issue of fact

and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The sole issue presented on appeal is whether ACTC is immune from liability in the underlying tort action. For the reasons hereinafter set forth, we conclude it is.

In this Commonwealth, the law is firmly established that “governmental immunity shields a state agency from civil liability when performing a governmental function.” *Hamblen v. Ky. Cabinet for Health and Family Servs.*, 322 S.W.3d 511, 515 (Ky. App. 2010). A governmental function is generally an act integral to state government. *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883 (Ky. 2009). Our Supreme Court recognized that educational entities created by legislature fiat and funded by the state treasury are state agencies and are entitled to governmental immunity. *Autry v. Western Ky. Univ.*, 219 S.W.3d 713 (Ky. 2009) (holding that Western Kentucky University was a state agency imbued with governmental immunity); *Grayson County Bd. of Educ. v. Prater*, 292 S.W.3d 883 (Ky. 2005) (holding that a Board of Education is a state agency entitled to governmental immunity). However, governmental immunity does not extend to the performance of a proprietary function. A proprietary function is an act that is nonintegral to state government and generally may be performed by private persons or business for profit.

In her complaint, Steele alleged that she sustained a physical injury to her foot when she stepped upon a piece of glass on the ACTC campus. Steele asserts that the glass was hidden by grass, and ACTC was negligent in failing to

provide a safe campus. Steele argues that the maintenance of a college campus is a proprietary act which affords no immunity, or in the alternative, if ACTC is entitled to immunity, such was waived by purchasing liability insurance. For purposes of summary judgment, these allegations will be considered as true, and all inferences therefrom will be viewed in a light most favorable to Steele. *See Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991).

ACTC is undisputedly a state agency and imbued with governmental immunity under Kentucky law. ACTS enjoys state funding and is subject to legislative directive. Kentucky Revised Statutes (KRS) 164.580. Moreover, ACTC performs the integral governmental function of providing higher education to citizens of this Commonwealth. One of the purposes of the university and college system in Kentucky is to provide instruction in residence. KRS 164.300. To attain this purpose and carry out ACTC's essential governmental function of providing higher education, it is legislatively mandated that ACTC maintain its campus in Ashland, Kentucky. KRS 164.591. *See also Autry*, 219 S.W. 3d 713 and KRS 164.591. As maintaining the campus premises is integral to providing higher education by any community college in Kentucky, ACTC is clearly performing a governmental function in maintaining its campus and is thus shielded by governmental immunity from tort claims related thereto.

As to ACTC's acquiring liability insurance, KRS 44.073(14)<sup>1</sup> and Supreme Court precedent clearly provide that the purchase of liability insurance

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<sup>1</sup> Kentucky Revised Statutes 44.073 was held unconstitutional in other respects in *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001).

does not constitute a waiver of immunity. *Grayson County Bd. Educ. v. Casey*, 157 S.W.3d 201 (Ky. 2005); *see also Jenkins Independent Schools v. Doe*, 379 S.W.3d 808 (Ky. App. 2012). Therefore, ACTC did not waive entitlement to governmental immunity by purchasing liability insurance.

In sum, we hold that ACTC is shielded by governmental immunity and that Steele's negligence claim is barred by this immunity. The circuit court erred by concluding otherwise. We, therefore, reverse the circuit court's April 26, 2013, Order and remand with directions that the circuit court dismiss the complaint in its entirety upon the basis of governmental immunity.

For the foregoing reasons, the Order of the Boyd Circuit Court is reversed and remanded with directions to dismiss the underlying complaint.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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