

MARLENE D. BURLEY et al.

v.

TOWN OF SEARSPORT

Argued December 8, 2021  
Decided December 28, 2021

Panel: STANFILL, C.J., MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and  
CONNORS, JJ.

#### MEMORANDUM OF DECISION

The Town of Searsport has filed an interlocutory appeal from an order entered in the Superior Court (Waldo County, *R. Murray, J.*) denying the Town’s motion for summary judgment on Marlene and David Burley’s claim that the Town was negligent in failing to prevent a sewage backup inside the Burleys’ home. The Town asserted immunity from liability pursuant to the Maine Tort Claims Act, 14 M.R.S. §§ 8101-8118 (2021). The court concluded that the Town “failed to sustain its burden of proof on its immunity defense because it has not adequately addressed whether it has an insurance policy covering the Burleys’ claim.” *See* 14 M.R.S. § 8116 (providing that if a municipality’s liability “insurance provides coverage in areas where [it] is immune, [it] shall be liable in those substantive areas but only to the limits of the insurance coverage”). Because the Town’s appeal is not from a final judgment and no exception to the final judgment rule applies, we do not reach the merits of the Town’s arguments and dismiss the appeal. *See Centrix Bank & Tr. v. Kehl*, 2012 ME 52, ¶ 4, 40 A.3d 942.

An exception to the final judgment rule permits appeal from the denial of a motion for summary judgment “[w]hen the denied motion for summary judgment addressed issues of . . . immunity from suit.” *Morgan v. Kooistra*, 2008 ME 26, ¶ 18, 941 A.2d 447. However, interlocutory appeal under the immunity exception is not available “[w]hen immunity issues have underlying fact questions that must be decided before the trial court can determine the applicability of immunities as a matter of law.” *Wilcox v. City of Portland*, 2009 ME 53, ¶ 14, 970 A.2d 295. In *Wilcox*, we dismissed the municipality’s interlocutory appeal under the immunity exception, noting that “[b]ecause the parties to this action . . . have left unresolved the question of the applicability of insurance to indemnify the [municipality] for the claims presented in this case, our consideration of the immunity issues pursuant to the Maine Tort Claims Act, at this stage in this appeal, would be premature.” 2009 ME 53, ¶ 12, 970 A.2d 295; see 14 M.R.S. § 8116. The same question remains unresolved here, and the Town’s appeal is therefore dismissed.

The entry is:

Appeal dismissed.

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Mark V. Franco, Esq., and Amy K. Olfene, Esq. (orally), Drummond Woodsum, Portland, for appellant Town of Searsport

John F. Lambert, Esq., Anna Polko Clark, Esq. (orally), and Tamra J. Wallace, Esq., Lambert Coffin, Portland, for appellees Marlene and David Burley