



the April 30, 2010, order of the circuit court of Madison County, which granted the motion for a summary judgment of defendant Alton Community Unit School District No. 11 (CUSD). For the following reasons, we affirm the judgment of the circuit court.

#### FACTS

According to the plaintiffs' complaint for damages, on September 12, 2006, at approximately 7:20 a.m., the plaintiffs were walking to a CUSD school, having moved to the district only a day or two before. The plaintiffs allege that they sustained injuries when, while walking, they were struck by a vehicle owned by defendant Donald Bourland and operated by defendant Crystal Bourland. The plaintiffs allege that CUSD owed them a legal duty to provide school bus transportation to and from school and that CUSD willfully and wantonly breached its alleged legal duty in both failing to provide school bus transportation to and from school based upon hazardous conditions and failing to annually assess and survey the route conditions.

The plaintiffs resided at 2024 Booker Street, Alton, Illinois, and allege that their residence is more than 1.5 miles from the CUSD school, which is located at 2202 College Avenue in Madison County, Illinois. The plaintiffs' expert, Mark Ezra, stated in his deposition that there were two possible routes that could have been used by the plaintiffs to go from their residence to school. The first and shortest route was approximately 1.3 miles, and the second route was approximately 1.6 miles in distance. Ezra stated that it was his testimony that CUSD should have provided the children with school bus transportation based on the hazardous conditions located on these routes, as determined by the Illinois Department of Transportation points system, rather than based on the actual distance of the routes.

On October 28, 2009, the circuit court of Madison County entered default judgments in favor of each of the plaintiffs and against defendants Crystal Bourland and Donald Bourland, who are not parties to this appeal. On February 16, 2010, defendant CUSD filed

a motion for a summary judgment. On April 30, 2010, the circuit court granted CUSD's motion for a summary judgment, finding that CUSD was immune from liability pursuant to section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201 (West 2008)) and pursuant to section 29-3 of the School Code (105 ILCS 5/29-3 (West 2008)). This timely appeal followed.

#### ANALYSIS

We begin with a statement of the applicable standard of review. " 'Whether the trial court properly granted summary judgment is a question of law that we review *de novo*.' " *First Mid-Illinois Bank & Trust, N.A. v. Parker*, 403 Ill. App. 3d 784, 790-91 (2010) (quoting *Happel v. Wal-Mart Stores, Inc.*, 316 Ill. App. 3d 621, 625 (2000), *aff'd*, 199 Ill. 2d 179 (2002)). A summary judgment is appropriate where the pleadings, depositions, admissions, affidavits, and exhibits, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue on any material fact and that the moving party is entitled to a judgment as a matter of law. *Courson v. Danville School District No. 118*, 301 Ill. App. 3d 752, 755 (1998). We may affirm the trial court on any basis in the record, regardless of whether that basis was considered by the trial court. *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007).

Section 29-3 of the School Code states that "[s]chool boards \*\*\* shall provide free transportation for pupils residing at a distance of one and one-half miles or more from any school to which they are assigned for attendance" unless adequate public transportation is available. 105 ILCS 5/29-3 (West 2008). The statute further states as follows:

"For the purpose of this Act 1½ miles distance shall be from the exit of the property where the pupil resides to the point where pupils are normally unloaded at the school attended; such distance shall be measured by determining the shortest distance on normally traveled roads or streets." *Id.*

The School Code further provides, "[E]ach school board may provide free transportation for any pupil residing within 1½ miles from the school attended where conditions are such that walking \*\*\* constitutes a serious hazard to the safety of the pupil \*\*\*." *Id.* However, according to the statute, a determination of what would constitute a serious safety hazard is to be made by the school board, after a written petition is made by the parent or guardian of a student alleging that walking to and from school would constitute a "serious safety hazard due to vehicular traffic or rail crossings." *Id.*

In the case at bar, the plaintiffs' expert, Mark Ezra, testified that the shortest distance between the plaintiffs' residence and their school along normally traveled roads or streets is, at the most, approximately 1.3 miles. Accordingly, CUSD was not required to provide school busing services. See 105 ILCS 5/29-3 (West 2008). Although the School Code states that a school district *may* provide school busing services to students residing within 1.5 miles, a parent or guardian must first file a written petition, and then the school must conduct a study and make findings, which are reviewed by the Department of Transportation. *Id.* After a determination that hazardous conditions exist, the school board is then required to annually review the conditions and determine whether the hazardous conditions remain unchanged. *Id.* As found by the trial judge, there is no genuine issue of material fact regarding whether the plaintiffs are entitled to damages for CUSD's failure to provide school bus transportation. The plaintiffs' residence was less than 1.5 miles from the school, and the plaintiffs' parents or guardians did not file a petition to request school bus services based on serious safety hazards. The trial court did not err in granting a summary judgment to CUSD.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

Affirmed.