

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WAKITA DORIETY, as the Administrator)	
for the Estate of Nasanto Antonio Crenshaw)	
)	
Plaintiff,)	
)	
v.)	1:23-CV-211
)	
MATTHEW LEWIS SLETTEN, in his)	
individual capacity, and CITY OF)	
GREENSBORO, NORTH CAROLINA,)	
)	
Defendants.)	

ORDER

The plaintiff’s decedent, Nasanto Crenshaw, was shot during an encounter with a Greensboro police officer on August 21, 2022. The administrator of his estate has sued the law enforcement officer involved, defendant Matthew Sletten, and the City of Greensboro. The City of Greensboro moves to dismiss, asserting governmental immunity. The motion will be granted.

Initially, the parties debate whether the motion to dismiss based on governmental immunity challenges personal jurisdiction or subject matter jurisdiction. While the North Carolina Supreme Court has not resolved the issue, the North Carolina Court of Appeals has persuasively made clear that governmental immunity is a question of personal jurisdiction. *See, e.g., Torres v. City of Raleigh*, 887 S.E.2d 429, 433 (N.C. Ct. App. 2023) (“This Court has consistently stated that a denial of governmental immunity should be classified as an issue of personal jurisdiction under Rule 12(b)(2).”); *accord Lexington*

Hous. Auth. v. Terrance Gerald & Haven Redev. Grp., No. 19-CVS-1036, 2019 WL 5681660, at *2 (N.C. Bus. Ct. Nov. 1, 2019) (same and collecting cases).

Governmental immunity “is a complete immunity from being sued in court.” *Ballard v. Shelley*, 257 N.C. App. 561, 564, 811 S.E.2d 603, 605 (2018) (cleaned up). Municipalities are entitled to governmental immunity to the same extent as the state. *See, e.g., Estate of Ladd by Ladd v. Funderburk*, 286 N.C. App. 46, 48, 879 S.E.2d 731, 734 (2022). The only reason alleged in the complaint to avoid governmental immunity is the purchase of liability insurance. Doc. 6 at ¶ 3. The City has presented uncontroverted evidence that it does not have liability insurance for the conduct alleged here. *See* Doc. 12-1.

When the defendant submits evidence, such as a declaration under oath, directed to jurisdiction along with the motion to dismiss, “the complaint’s allegations can no longer be taken as true or controlling and the plaintiff cannot rest on the allegations of the complaint.” *Providence Volunteer Fire Dep’t v. Town of Weddington*, 253 N.C. App. 126, 134, 800 S.E.2d 425, 432 (2017) (cleaned up) (quoting *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C. App. 612, 615–16, 532 S.E.2d 215, 218 (2000)). Here, the plaintiff has produced no such evidence.

The plaintiff contends in briefing that the City may have waived this protection by inconsistent assertions of governmental immunity. But this is not alleged in the complaint, and even in the briefing the plaintiff provides no factual basis for this assertion beyond a twenty-year-old case where evidence to that effect was presented.

Doc. 18 at 2–3. Evidence that there were inconsistent assertions of governmental immunity twenty years ago does not suffice to show that this conduct continues today.

It is **ORDERED** that the motion to dismiss filed by the defendant City of Greensboro, Doc. 11, is **GRANTED**. The motion to dismiss filed by the defendant Matthew Sletten, Doc. 13, will be resolved by a separate order.

This the 28th day of July, 2023.



UNITED STATES DISTRICT JUDGE