

Pickleball lawsuit sent back to District Court

Appeals court ruled South Suburban Parks is likely immune from noise nuisance lawsuit

BY JUSTIN WINGERTER

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Five neighbors of a noisy rec center in Lone Tree likely are prohibited from suing it for being a nuisance because the center is owned by the government, a court ruled Thursday.

In summer 2024, the five asked a judge in Castle Rock to close the Lone Tree Recreation Center's pickleball courts or force the South Suburban Parks and Recreation District to construct a soundproof structure around them. Noise levels had hit 62 decibels, they said.

"Constant, loud pickleball strikes are offensive, cause stress and devalue property," wrote lawyers for Mark Goodman, Richard and Donna Campbell, William Fornia and Matthew Troyer.

South Suburban asked that the case be dismissed, because government entities are generally exempt from nuisance lawsuits by law. But Judge Ben Leutwyler disagreed, ruling last October that because the neighbors were seeking only an injunction closing the pickleball courts and not money, their lawsuit was not barred by the Colorado Governmental Immunity Act. *Note*

South Suburban quickly appealed that ruling to the Colorado Court of Appeals, where a three-judge panel spent one year considering it before issuing its opinion Thursday. *Note*

The three judges unanimously concluded that by arguing their property values have declined, the homeowners are seeking monetary damages whether they say so or not, meaning their lawsuit is a tort case and almost certainly cannot be brought against the government. *Note*

There is one exception. Governments waive their immunity when they create "a dangerous condition," such as a public employee crashing their vehicle into someone, a public sidewalk causing someone to fall or a public jail failing to protect inmates inside, for example.

"Because we have concluded that the homeowners' nuisance claims are each subject to the Colorado Governmental Immunity Act, we remand the case to (Judge Leutwyler) to determine ... whether the district waived its immunity," Appeals Court Judge Pax Moultrie wrote.

The neighbors were represented by attorney Tessa Carberry with Husch Blackwell in Denver.

South Suburban's lawyers were Nicholas Poppe and Timothy Walsh, with Nathan Dumm & Mayer in Denver. Attorneys for both sides declined to comment on the opinion.