

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Argued - September 5, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
ROBERT A. SPOLZINO
MARK C. DILLON, JJ.

2005-08247

DECISION & ORDER

Kathryn Russo, et al., appellants, v Valley Central
School District, respondent.

(Index No. 3819/03)

Finkelstein & Partners, Newburgh, N.Y. (George A. Kohl 2nd of counsel), for appellants.

O'Connor, McGuinness, Conte, Doyle & Oleson, White Plains, N.Y. (Montgomery L. Effinger of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Orange County (Peter C. Patsalos, J.), dated June 10, 2005, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Kathryn Russo allegedly was injured during an after-school program when, as she was demonstrating how to use a swing, a chain detached from the seat, causing her to fall to the ground. In opposition to the defendant's prima facie demonstration of its entitlement to judgment as a matter of law, the plaintiffs failed to raise a triable issue of fact as to whether the defendant created or had actual or constructive notice of the alleged dangerous and defective condition of the swing, or whether that negligence by the defendant was a proximate cause of the

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injuries alleged (*see Goetz v Town of Smithtown*, 303 AD2d 367; *Sinto v City of Long Beach*, 290 AD2d 550). Thus, the defendant's motion for summary judgment dismissing the complaint was properly granted.

MILLER, J.P., RITTER, SPOLZINO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court