

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

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_____AD3d_____

Submitted - April 24, 2007

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2006-09839

DECISION & ORDER

Salvatore Mastropolo III, etc., et al., respondents,
v Goshen Central School District, appellant.

(Index No. 425/05)

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

Finkelstein & Partners, LLP, Newburgh, N.Y. (Kristine M. Cahill of counsel), for respondents.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Orange County (Alessandro, J.), dated August 30, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is granted.

The defendant school district established its entitlement to summary judgement by showing that the sole proximate cause of the infant plaintiff's injury was his jumping up and swinging from the pipes supporting the basketball backboard, in knowing violation of school rules (*see Maillet v Campbell*, 280 AD2d 526; *Ascher v Scarsdale School Dist.*, 267 AD2d 339; *see also Marchetti v East Rochester Cent. School Dist.*, 26 AD3d 881; *Ruggerio v Board of Educ. of City of Jamestown*,

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31 AD2d 884). In opposition, the plaintiffs failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

SPOLZINO, J.P., FLORIO, SKELOS and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court