

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

D17096
W/kmg

_____AD3d_____

Submitted - November 2, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2006-09266

DECISION & ORDER

Sophia Dabnis, etc., et al., appellants, v West Islip
Public Library, respondent, et al., defendants.

(Index No. 19569/04)

Steven Cohn, P.C., Carle Place, N.Y. (Melissa A. Lenowitz of counsel), for
appellants.

Hammill, O'Brien, Croutier, Dempsey & Pender, P.C., Syosset, N.Y. (Anton
Piotroski of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from
an order of the Supreme Court, Suffolk County (Doyle, J.), dated July 20, 2006, which granted the
motion of the defendant West Islip Public Library for summary judgment dismissing the complaint
insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The infant plaintiff, then 1½ years old, was allegedly injured as a result of an
unexplained fall while “toddling” in an aisle at the defendant West Islip Public Library (hereinafter
the Library). Upon falling, the infant plaintiff struck her head on a fixed metal shelf divider on a
library bookshelf. The infant plaintiff and her mother, the plaintiff Christa Dabnis, commenced this
action against the Library, among others, alleging that the Library was negligent in placing a divider
with sharp unprotected edges in a section of the library designated for children. The Library
successfully moved for summary judgment dismissing the complaint insofar as asserted against it. We
affirm.

November 27, 2007

Page 1.

DABNIS v WEST ISLIP PUBLIC LIBRARY

To establish a prima facie case of negligence, a plaintiff must demonstrate the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and that the breach was a proximate cause of the plaintiff's injury (*see Pulka v Edelman*, 40 NY2d 781, 782; *Kypibida v Good Samaritan Hosp.*, 35 AD3d 544, 545). Owners and business proprietors have a duty to maintain their property “in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk” (*Peralta v Henriquez*, 100 NY2d 139, 143, quoting *Basso v Miller*, 40 NY2d 233, 241; *see Koppel v Hebrew Academy of Five Towns*, 191 AD2d 415).

The Supreme Court properly held that the Library established its prima facie entitlement to judgment as a matter of law, since its property was in a reasonably safe condition, and it breached no duty to the infant plaintiff (*see Rygel v 8750 Bay Parkway, LLC*, 16 AD3d 572). There is no contention, or factual support for any contention, that the metal dividers were hidden or concealed, or caused the infant plaintiff's fall. Indeed, the plaintiffs failed to elucidate the cause of the infant plaintiff's fall in the first instance (*see Hennington v Ellington*, 22 AD3d 721; *Tejada v Jonas*, 17 AD3d 448; *Burnstein v Mandalay Caterers*, 306 AD2d 428). As such, the plaintiffs, in opposing the motion, failed to raise a triable issue of fact with respect to negligence and proximate cause (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Rogan v Federated Dept. Stores*, 141 AD2d 522).

SCHMIDT, J.P., RIVERA, FLORIO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court