

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

D18233
G/kmg

_____AD3d_____

Argued - January 31, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
MARK C. DILLON
ARIEL E. BELEN, JJ.

2006-11457

DECISION & ORDER

Anthony Fotiadis, etc., et al., appellants, v
City of New York, et al., defendants, Samuel
Field YM and YWHA, respondent.

(Index No. 18552/04)

Philip J. Rizzuto, P.C., Carle Place, N.Y. (Joseph Kunzeman, Kenneth R. Shapiro, and Kristen N. Reed of counsel), for appellants.

Wenick & Finger, P.C., New York, N.Y. (Frank J. Wenick and Carol Lee Chevalier of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Elliot, J.), entered November 8, 2006, as granted that branch of the motion of the defendant Samuel Field YM and YWHA which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

After his dismissal from middle school on April 16, 2004, the infant plaintiff disregarded his mother's instructions to attend the after-school program run by the defendant Samuel Field YM and YWHA (hereinafter the Y) and went directly to a park, where he fell from a swing and fractured his right leg.

A school's duty to adequately supervise a student is "coextensive" with its physical custody of and control over the student (*Pratt v Robinson*, 39 NY2d 554, 560; see *Chalen v Glen*

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Cove School Dist., 29 AD3d 508, 509; *Ramo v Serrano*, 301 AD2d 640; *Bowers v City of New York*, 294 AD2d 526). The Y established its entitlement to summary judgment by demonstrating that the infant plaintiff was injured when he was beyond the “orbit” of its authority (*see Pratt v Robinson*, 39 NY2d at 560), and that the Y’s failure to notify the infant’s mother that the infant plaintiff was not attending the after-school program was not the proximate cause of his injuries (*see generally Derdarian v Felix Contr. Corp.*, 51 NY2d 308). In opposition, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the Y’s motion which was for summary judgment dismissing the complaint insofar as asserted against it (*see Chalen v Glen Cove School Dist.*, 29 AD3d 508; *Ramo v Serrano*, 301 AD2d 640).

The plaintiffs' remaining contentions are without merit.

RIVERA, J.P., MILLER, DILLON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court