

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

D19357
X/kmg

_____AD3d_____

Submitted - April 22, 2008

ROBERT A. LIFSON, J.P.
DAVID S. RITTER
MARK C. DILLON
JOHN M. LEVENTHAL, JJ.

2007-08849

DECISION & ORDER

Leah M. Knightner, etc., et al., respondents,
v William Floyd Union Free School District,
appellant.

(Index No. 01430/06)

Tromello McDonnell & Kehoe, Melville, N.Y. (Kathleen Watson of counsel), for
appellant.

Rosenberg & Gluck, LLP, Holtsville, N.Y. (Michael V. Buffa of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from
an order of the Supreme Court, Suffolk County (Whelan, J.), dated July 24, 2007, which denied its
motion for summary judgment dismissing the complaint.

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

The infant plaintiff and her mother commenced this action against the defendant school
district after the infant plaintiff was injured while playing dodge ball in gym class. The injury occurred
when the infant plaintiff stepped backwards and tripped over another student's foot during the course
of the game. The defendant's motion for summary judgment was denied by the Supreme Court on
the ground that there were triable questions of fact as to whether the infant plaintiff's gym teacher
provided adequate supervision. We reverse.

May 20, 2008

Page 1.

KNIGHTNER v WILLIAM FLOYD UNION FREE SCHOOL DISTRICT

The defendant met its prima facie burden by demonstrating that the incident occurred so quickly that even the most intense supervision could not have averted the accident (*see Mayer v Mahopac Cent. School Dist.*, 29 AD3d 653, 654; *Lopez v Freeport Union Free School Dist.*, 288 AD2d 355; *Convey v City of Rye School Dist.*, 271 AD2d 154, 160).

In opposition, the plaintiffs failed to raise a triable issue of fact (*see David v County of Suffolk*, 1 NY3d 525, 526; *Ronan v School Dist. of City of New Rochelle*, 35 AD3d 429; *Wuest v Board of Educ. of Middle Country Cent. School Dist.*, 298 AD2d 578; *Sangineto v Mamaroneck Union Free School Dist.*, 282 AD2d 596; *Checchia v Port Wash. U.S.F.D.*, 253 AD2d 839). Accordingly, the defendant's motion for summary judgment should have been granted.

In view of the foregoing, we need not reach the plaintiffs' remaining contentions.

LIFSON, J.P., RITTER, DILLON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court