

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

D21045  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 17, 2008

WILLIAM F. MASTRO, J.P.  
REINALDO E. RIVERA  
JOSEPH COVELLO  
JOHN M. LEVENTHAL, JJ.

---

2007-07745

DECISION & ORDER

Brian Conte, etc., et al., appellants,  
v Minnesauke Elementary School,  
et al., respondents.

(Index No. 22245/05)

---

Michael A. Cervini, P.C. (Lisa M. Comeau, Garden City, N.Y. [Maryellen O'Brien], of counsel), for appellants.

DeVitt Spellman Barrett, LLP, Smithtown, N.Y. (Diane K. Farrell of counsel), for respondents.

In an action, inter alia, to recover damages for negligent supervision, the plaintiffs appeal from a judgment of the Supreme Court, Suffolk County (R. Doyle, J.), entered July 31, 2007, which, upon an order of the same court entered May 30, 2007, granting the defendants' motion for summary judgment dismissing the complaint, is in favor of the defendants and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

While attending an after-school program sponsored by the defendants, the then-five-year-old infant plaintiff allegedly was injured when he jumped off a slide in the school playground. The plaintiffs commenced this action, and the defendants moved for summary judgment dismissing the complaint.

The defendants established their prima facie entitlement to judgment as a matter of law by presenting evidence that there was adequate playground supervision, and that the level of

November 12, 2008

Page 1.

CONTE v MINNESAUKE ELEMENTARY SCHOOL

supervision was not the proximate cause of the accident (*see Davidson v Sachem Cent. School Dist.*, 300 AD2d 276). The evidence the plaintiffs submitted in opposition to the defendants' motion for summary judgment including, inter alia, their expert's affidavit, failed to raise a triable issue of fact (*see Swan v Town of Brookhaven*, 32 AD3d 1012, 1013-1014). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

The plaintiffs' remaining contentions are without merit.

MASTRO, J.P., RIVERA, COVELLO and LEVENTHAL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court