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

D27353
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_____AD3d_____ Submitted - March 23, 2010

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2009-04699 DECISION & ORDER

Christopher Coakley, etc., et al., plaintiffs-respondents, v Middle County Central School District, defendant-respondent, Timothy Jones, etc., et al., appellants.

(Index No. 23882/04)

Galvano and Xanthakis, P.C., New York, N.Y. (Matthew Kelly of counsel), for appellants.

Tartamella, Tartamella & Fresolone, Hauppauge, N.Y. (Natale J. Tartamella of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendants Timothy Jones, an infant by his mother and natural guardian Joanne Jones, and Joanne Jones, individually, appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Molia, J.), dated April 13, 2009, as purportedly denied that branch of their motion which was for summary judgment dismissing the complaint and all cross claims insofar as asserted against the defendant Timothy Jones, an infant, by his mother and natural guardian Joanne Jones.

ORDERED that the appeal is dismissed, without costs or disbursements.

The defendants Timothy Jones, an infant by his mother and natural guardian Joanne Jones, and Joanne Jones, individually, moved for summary judgment dismissing the complaint and all cross claims asserted against them. The Supreme Court decided only that branch of the motion which related to Joanne Jones individually. The defendants' contentions concerning that branch of the motion which was for summary judgment dismissing the complaint and all cross claims insofar

as asserted against Timothy Jones are not properly before us, as that branch of the motion was not addressed by the Supreme Court. Thus, it remains pending and undecided (*see Magriples v Tekelch,* 53 AD3d 532; *Wheels Am. N.Y., Ltd v Montalvo,* 50 AD3d 1130; *Hawkins-Bond v Konefsky,* 48 AD3d 417; *Katz v Katz,* 68 AD2d 536).

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

ENTER:

James Edward Pelzer
Clerk of the Court