

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

D29990
Y/prt

_____AD3d_____

Argued - January 11, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-11570

DECISION & ORDER

Neil R. Frei, etc., et al., appellants, v Arlington Central
School District, respondent, et al., defendants.

(Index No. 5209/07)

Kelly & Meenagh, Poughkeepsie, N.Y. (Thomas F. Kelly III of counsel), for
appellants.

Barry McTiernan & Moore (Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis
& Fishlinger, Uniondale, N.Y. [Gregory A. Cascino], 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, Dutchess County (Brands, J.),
dated October 29, 2009, as granted that branch of the motion of the defendant Arlington Central
School District 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.

The Supreme Court properly granted that branch of the motion of the defendant
Arlington Central School District (hereinafter the defendant) which was for summary judgment
dismissing the complaint insofar as asserted against it (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).
The defendant established, prima facie, that its alleged negligence in supervising the infant plaintiff
was not a proximate cause of the injury-producing event (*see Benitez v New York City Bd. of Educ.*,
73 NY2d 650; *Convey v City of Rye School Dist.*, 271 AD2d 154, 159-160). In opposition, the
plaintiffs failed to submit evidence sufficient to raise a triable issue of fact (*see Zuckerman v City of*

New York, 49 NY2d 557, 563). The defendant also established, prima facie, that it did not create or have actual or constructive notice of the alleged defective condition of the object which caused the injury of the plaintiff Neil R. Frei (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838). In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d at 563).

The plaintiffs' remaining contention is without merit.

RIVERA, J.P., LEVENTHAL, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court