

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

D30681
G/prt

_____AD3d_____

Argued - March 11, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RUTH C. BALKIN
ROBERT J. MILLER, JJ.

2010-04535

DECISION & ORDER

Jose Hernandez, etc., et al., respondents, v Middle
Country Central School District, appellant.

(Index No. 448/08)

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y.
(Gregory A. Cascino of counsel), for appellant.

O'Rourke & Hansen, PLLC, Hauppauge, N.Y. (James J. O'Rourke 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 (Jones, Jr., J.), dated March 9, 2010, which denied
its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A school has a duty to exercise the same degree of care toward its students as would
a reasonably prudent parent (*see Mirand v City of New York*, 84 NY2d 44, 49). A school, however,
is not an insurer of its students' safety and will be held liable only for foreseeable injuries proximately
related to the absence of adequate supervision (*see Paragas v Comsewogue Union Free School Dist.*,
65 AD3d 1111; *Paca v City of New York*, 51 AD3d 991, 992). Here, the defendant failed to submit
evidence sufficient to establish, prima facie, that it properly supervised the infant plaintiff or that its
alleged negligent supervision of the infant plaintiff was not a proximate cause of his injuries (*see*
generally Armellino v Thomase, 72 AD3d 849; *Rivera v Board of Educ. of City of Yonkers*, 19 AD3d

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394). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint, regardless of the sufficiency of the plaintiffs' opposition papers (*see Zuckerman v City of New York*, 49 NY2d 557).

MASTRO, J.P., DILLON, BALKIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court