

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

D34913
O/kmb

_____AD3d_____

Argued - April 5, 2012

MARK C. DILLON, J.P.
RANDALL T. ENG
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2011-01180

DECISION & ORDER

Brian O. (Anonymous), etc., et al., appellants, v
Riverhead Central School District, respondents.

(Index No. 18944/08)

Keegan & Keegan, Ross & Rosner, LLP, Patchogue, N.Y. (Jamie G. Rosner of counsel), for appellants.

Mulholland, Minion, Duffy, Davey, McNiff & Beyrer, Williston Park, N.Y. (Christine M. Gibbons of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Pastoressa, J.), dated November 15, 2010, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the sudden and spontaneous collision between the infant plaintiff and a fellow student while playing softball in a physical education class could not have been prevented by the most intense supervision (*see Paragas v Comsewogue Union Free School Dist.*, 65 AD3d 1111; *Scarito v St. Joseph Hill Academy*, 62 AD3d 773, 775; *Ronan v School Dist. of City of New Rochelle*, 35 AD3d 429, 430). In opposition, the plaintiff failed to raise a triable issue of fact (*see Lizardo v Board of Educ. of the City of N.Y.*, 77 AD3d 437). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., ENG, BELEN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

May 15, 2012

O. (ANONYMOUS) v RIVERHEAD CENTRAL SCHOOL DISTRICT