No. 20

Virgil Smith, &c.,
Respondent,
v.
Hazel E. Sherwood, et al.,
Defendants,
Central New York Regional Transporation Authority, Also Known as Centro, Inc., and Theodore R. Gray,
Appellants.

W. Bradley Hunt, for appellants.
Michael P. Kenny, for respondent.
New York Public Transit Association, amicus curiae.

GRAFFEO, J.:

Defendant Central New York Regional Transportation Authority, also known as Centro, contracted with the Syracuse City School District to provide students in the District with bus transportation to and from various schools. Centro buses were

public buses, not yellow school buses that are generally associated with the transportation of school students and are outfitted with specially designed safety equipment. The contract did not prohibit members of the public from riding on Centro's buses when students were being transported, but there were exterior signs that read "Special" posted on these buses to inform potential non-student riders that the buses were not following normal routes.

In October 2002, Derek Smith was 12 years old and attended seventh grade at a private school in the Syracuse area. At the beginning of the school year, Derek and other students attended a presentation regarding proper bus safety. They were instructed not to cross in front of buses and to wait until buses were at least a block away before attempting to cross streets. The purpose of this cautionary advice was to alert the students that stopped buses could block their ability to see traffic. Similar instructions were repeated in written materials that were distributed to the students and the warnings were reiterated on signs in Centro buses. Centro's rules also required its bus drivers to use the public address system on the buses twice a week to repeat these cautions to students.

After school on October 3, 2002, Derek got on a Centro bus being driven by defendant Theodore Gray. Derek usually disembarked at a designated stop on the west side of South Salina Street (a four-lane road) near West Cheltenham Road, the side of

the street nearest to his home. That day, the bus driver went past Derek's stop, either because Derek did not pull the bus cord to inform the driver that he wanted to get off or because the driver did not hear or ignored the signal. After the bus turned around in a parking lot (pursuant to its scheduled route), it stopped on the east side of South Salina Street and Derek exited the bus. He immediately walked in front of the bus and into the adjoining lane of traffic, where he was struck by an automobile traveling in the same direction as the bus. Derek was seriously injured in the accident.

Derek's father commenced this action against Centro, Gray and others. As relevant to this appeal, the complaint asserted that Centro and Gray had breached their common-law duty to Derek and violated the statutory provisions that regulate school buses. Centro and Gray moved for summary judgment dismissing the complaint. Supreme Court granted their motion, but the Appellate Division, with two Justices dissenting, modified and reinstated the common-law negligence claim. The Appellate Division then certified a question to us asking whether its order was proper.

We answer the certified question in the negative. It has long been the rule that "[a] common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area" (Miller v Fernan, 73 NY2d 844, 846 [1988], citing Fagan v Atlantic Coast Line R.R. Co., 220

NY 301, 306-307 [1917]). Once that occurs, no further duty exists, even if the disembarking passenger is a school child who attempts to cross a street by passing in front of a stopped bus (see e.g. Wisoff v County of Westchester, 296 AD2d 402 [2d Dept 2002]; Sigmond v Liberty Lines Tr., 261 AD2d 385, 387 [2d Dept 1999]; Kramer v Lagnese, 144 AD2d 648, 649 [2d Dept 1988]; Mooney v Niagara Frontier Tr. Metro Sys., 125 AD2d 997, 998 [4th Dept 1986]). Although plaintiff correctly notes that there is a question of fact regarding the reason why Derek was dropped off on the east side of South Salina Street instead of the west side, it is unnecessary to resolve that factual issue because Derek exited the bus at a safe location, terminating the duty owed to him by Centro and Gray.

In allowing the negligence claim to proceed, the Appellate Division relied, in part, on Sewar v Gagliardi Bros. Serv. (51 NY2d 752 [1980]). Sewar, however, involved a yellow school bus subject to the mandated use of specific safety equipment under Vehicle & Traffic Law § 375 (20). Such specially-equipped school buses are statutorily required to stop "with red signal lights flashing" until a passenger needing to cross a street does so (id. § 1174 [b]). Furthermore, a violation of Vehicle & Traffic Law § 1174 (b) may serve as the basis for a viable cause of action (see Chainani v Board of Educ. of City of N.Y., 87 NY2d 370, 382-383 [1995]; Van Gaasbeck v Webatuck Cent. School Dist. No. 1, 21 NY2d 239, 244-245 [1967]).

Concomitantly, the Vehicle & Traffic Law provides that all operators of motor vehicles must stop when approaching a school bus with red flashing lights (see Vehicle & Traffic Law § 1174 [a]). The public bus that Derek rode, however, was not subject to these rules (see Vehicle & Traffic Law § 375 [20]) and its driver therefore did not have the legal authority (or the necessary safety equipment) to make other vehicles stop while Derek crossed the street. In the absence of the special duty that applies to yellow school buses, Centro and Gray are entitled to summary judgment dismissing the complaint against them.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, with costs, the common-law negligence claim against defendants Centro and Theodore R. Gray dismissed and the certified question answered in the negative.

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Order, insofar as appealed from, reversed, with costs, the common-law negligence claim against defendants Central New York Regional Transportation Authority and Theodore R. Gray dismissed and certified question answered in the negative. Opinion by Judge Graffeo. Chief Judge Lippman and Judges Ciparick, Read, Smith, Pigott and Jones concur.

Decided February 15, 2011