

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

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_____AD3d_____

Argued - June 13, 2023

FRANCESCA E. CONNOLLY, J.P.
CHERYL E. CHAMBERS
LINDA CHRISTOPHER
BARRY E. WARHIT, JJ.

2020-04833

DECISION & ORDER

Colin Burdo, appellant, v Cold Spring Harbor Central
School District, respondent.

(Index No. 27376/12)

McCarthy & Carbone, P.C., Hauppauge, NY (Patrick C. McCarthy of counsel), for
appellant.

Congdon, Flaherty, O’Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, NY
(Kathleen D. Foley of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Suffolk County (Martha L. Luft, J.), dated February 25, 2020. The order
granted the defendant’s motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

In June 2011, the plaintiff, a 6th-grade student enrolled in the defendant school
district, allegedly was assaulted, harassed, and subjected to bullying by other students during an
incident that occurred while the plaintiff was attending an overnight school trip. The plaintiff
subsequently commenced this action, alleging, inter alia, negligent supervision by the defendant.
The defendant moved for summary judgment dismissing the complaint. In an order dated February
25, 2020, the Supreme Court granted the defendant’s motion for summary judgment dismissing the
complaint. The plaintiff appeals, and we affirm.

“Schools have a duty to adequately supervise the students in their care, and may be
held liable for foreseeable injuries proximately related to the absence of adequate supervision”
(*Sullivan v St. Ephrem R.C. Parish Church*, 214 AD3d 751, 752, quoting *Timothy Mc. v Beacon City*)

Sch. Dist., 127 AD3d 826, 827). “However, schools are not the insurers of the safety of their students” (*Armellino v Thomase*, 72 AD3d 849, 849; *see Wienclaw v East Islip Union Free Sch. Dist.*, 192 AD3d 945, 946). “Where the complaint alleges negligent supervision due to injuries related to an individual’s intentional acts, the plaintiff generally must allege that the school knew or should have known of the individual’s propensity to engage in such conduct, such that the individual’s acts could be anticipated or were foreseeable” (*Sullivan v St. Ephrem R.C. Parish Church*, 214 AD3d at 753). “Actual or constructive notice to the school of prior similar conduct generally is required” (*Mathis v Board of Educ. of City of N.Y.*, 126 AD3d 951, 952; *see Meyer v Magalios*, 170 AD3d 1163, 1165).

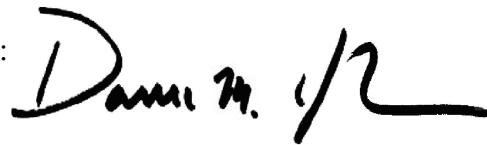
Here, the defendant established its prima facie entitlement to judgment as a matter of law dismissing the complaint. In support of its motion, the defendant submitted evidence demonstrating that the defendant had no actual or constructive notice of prior conduct by the students allegedly involved herein that was similar to the subject incident (*see Meyer v Magalios*, 170 AD3d at 1165; *Maldari v Mount Pleasant Cent. Sch. Dist.*, 131 AD3d 1019, 1020). In opposition, the plaintiff failed to raise a triable issue of fact (*see Meyer v Magalios*, 170 AD3d at 1165). The plaintiff’s reliance on his deposition testimony, which contradicted his earlier testimony given at the General Municipal Law § 50-h hearing, raised only a feigned factual issue and was insufficient to defeat the defendant’s prima facie showing (*see Ventura v County of Nassau*, 175 AD3d 620, 621).

The plaintiff’s remaining contentions are either without merit or not properly before this Court.

Accordingly, the Supreme Court properly granted the defendant’s motion for summary judgment dismissing the complaint.

CONNOLLY, J.P., CHAMBERS, CHRISTOPHER and WARHIT, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", with a stylized flourish at the end.

Darrell M. Joseph
Acting Clerk of the Court