

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

586

CA 15-01630

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND CURRAN, JJ.

BRIAN EISCH, AS PARENT AND NATURAL GUARDIAN OF
ISAAC EISCH, AN INFANT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SANDY CREEK CENTRAL SCHOOL DISTRICT,
DEFENDANT-APPELLANT.

PETRONE & PETRONE, P.C., UTICA, CONGDON, FLAHERTY, O'CALLAGHAN, REID,
DONLON, TRAVIS & FISHLINGER, UNIONDALE (CHRISTINE GASSER OF COUNSEL),
FOR DEFENDANT-APPELLANT.

ALEXANDER LAW OFFICE, PLLC, SYRACUSE (RALPH S. ALEXANDER OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oswego County (James W. McCarthy, J.), entered March 13, 2015. The order, among other things, denied in part defendant's motion for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: We affirm for reasons stated at Supreme Court in its bench decision and by the court in its written decision. We write only to note that, contrary to defendant's contention, the court properly granted plaintiff's cross motion for summary judgment dismissing the first and second affirmative defenses in their entirety. Although defendant alleged, inter alia, that the injuries sustained by plaintiff's son were caused by the negligence of "others," i.e., the student who assaulted him, we conclude that there is no view of the evidence that the student's conduct was anything but intentional (*see generally Smith v County of Erie*, 295 AD2d 1010, 1010-1011).

Entered: July 1, 2016

Frances E. Cafarell
Clerk of the Court