SHORT FORM ORDER **INDEX NO. 22032-1997**

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XIV - SUFFOLK COUNTY

PRESENT:
Hon. WILLIAM L. UNDERWOOD, JR.

CHRISTOPHER RAMO and STEPHEN RAMO,

Plaintiff(s),

-against-

JOSE SERRANO, TOWN OF HUNTINGTON, ST. ANTHONY'S HIGH SCHOOL,

Defendant(s).

ORIG. RETURN DATE: 11/14/01
FINAL RETURN DATE: 11/28/01
MTN. SEQ. #: 003 -MD

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Upon the following papers numbered 1 to 12 read on this motion for summary judgment
Notice of Motion/Order to Show Cause and supporting papers 1-8 ; Notice of Cross Motion and supporting papers___;
Answering Affidavits and supporting papers 9-11 ; Replying Affidavits and supporting papers 12 ; Other _____;
(~~and after hearing counsel in support of and opposed to the motion~~) it is,

ORDERED that the defendant St. Anthony's High School's motion for summary judgment is denied under the circumstances presented herein. (CPLR 3212).

This is an action for personal injuries sustained by the plaintiff Christopher Ramo as a result of a motor vehicle accident that occurred on October 9, 1996 on Wolf Hill Road, Huntington, Suffolk County, New York. Plaintiff Stephen Ramo, Christopher Ramo's father has brought a derivative cause of action.

Christopher Ramo, a student at defendant St. Anthony's High School was the operator of a 1985 Toyota Corolla with five passengers, all students at the defendant High School, when his vehicle struck a 1992 Toyota driven by defendant Jose Serrano. The plaintiffs and passengers were driving to the local bowling alley where a physical education class was being held when the accident occurred. The class was the first class of the day and prior to going to the bowling alley the plaintiff stopped at the defendant High School to pick up the other students.

By way of their complaint it is alleged that the defendant St. Anthony's High School was negligent in allowing the plaintiff to drive his motor vehicle to the bowling alley, in failing to provide safe and proper transportation to the bowling alley, and failing to provide proper and safe supervision of the students and their conduct.

The extraordinary remedy of summary judgment should only be granted when the movant demonstrates the absence of a material issue of fact (***Benincasa v. Garrubbo***, 141 A.D.2d 636 [1988]). Summary judgment "is rarely granted in negligence cases since the very question of whether a defendant's conduct amounts to negligence is inherently a question for

the trier of fact in all but the most egregious instances". (***Johannsdotter v. Kohn***, 90 A.D.2d 842, *citing* ***Wilson v. Sponable***, 81 A.D.2d 1, 5; *Siegel, Practice Commentaries*, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C3212:8, p. 430). "Even where facts are conceded there is often a question as to whether the defendant or the plaintiff acted reasonably under the circumstances. This can rarely be decided as a matter of law..." (***Andre v. Pomeroy***, 35 N.Y.2d 361, 364 [1974]). In order to obtain summary judgment, a movant must make a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate an absence of any material issue of fact". (***Alverez v. Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923, [1986], *citing* ***Winegrad v. NYU Medical Center***, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). "To make out a prima facie case of negligence, a plaintiff must prove that the defendant owed a duty, breached that duty and that the breach proximately caused the plaintiff's injury. (*Soloman v. City of New York,* 66 N.Y.2d 1026, 1027, 499 N.Y.S.2d 392, 489 N.E.2d 1294)". (***Wayburn v. Madison Land Ltd. Partnership***, 282 A.D.2d 301, 724 N.Y.S.2d 34, 37 [1st Dept. 2001]).

When faced with a motion for summary judgment on proximate cause grounds, the plaintiff need not prove proximate cause by a preponderance of the evidence, which is the plaintiff's burden at trial. Instead, in order to withstand summary judgment, a plaintiff need only raise a triable issue of fact regarding whether the defendant's conduct proximately caused plaintiff's injury. (***Burgos v. Aqueduct Realty Corporation,*** 92 N.Y.2d 544, 684

N.Y.S.2d 139, 141 [1998]).

It is well settled "that a school district is required to 'transport its students in a careful and prudent manner'. (*Bruce v. Hasbrouk,* 207 A.D.2d 10, 12, 620 N.Y.S.2d 562, *lv. granted,* 85 N.Y.2d 809, 628 N.Y.S.2d 52, 651 N.E.2d 920; *see Pratt v. Robinson,* 39 N.Y.2d 554, 384 N.Y.S.2d 749, 349 N.E.2d 849). However, we have noted that this duty does not extend to situations where the student is no longer under the school district's authority or is no longer in its physical custody (*see, Bruce v. Hasbrouk, supra)*". (***Wenger v. Goodell,*** 220 A.D.2d 937, 632 N.Y.S.2d 865 [3rd Dept. 1995]).

The plaintiff testified at his examination before trial that on the date of the accident, he drove from his home to St. Anthony's High School, arriving there at approximately 8:00 am. He picked up five other students at the school and he proceeded to the Melville Bowling Alley for first and second period gym class. The gym class was scheduled to begin at 8:20 am, and the plaintiff left the school parking lot between 8:10 am and 8:15 am. The plaintiff further testified that attendance was taken at the bowling alley during the gym class and not at the school prior thereto.

In ***Bushnell v. Brene-Knox-Westerlo School District,*** 125 A.D.2d 859, 510 N.Y.S.2d 488, [3rd Dept. 1986] *lv. denied* 69 N.Y.2d 609, 516 N.Y.S.2d 1024, the Court affirmed a decision wherein it was held that no duty existed when a student, with the bus driver's knowledge, left the bus and was later injured while riding in a fellow students car. In the

matter at bar, it is undisputed that the plaintiff was given driving privileges by the defendant High School and the plaintiff's parents acquiesced. In applying for a parking permit, the plaintiff acknowledged that he was aware of the school regulations regarding same. However, based upon the evidence submitted herein, we cannot determine whether the plaintiff, by driving to the bowling alley, violated the regulations, thereby removing himself from the defendant High School's custody, or if he did so with the approval of the defendant, doing so under the guise of their authority.

Accordingly, based on the foregoing and the circumstances presented herein, we find that a material issue of fact exists and the defendant's motion for summary judgment is denied.

This shall constitute the decision and order of the Court.

Submit judgment.

Dated: February 6, 2002

HON. WILLIAM L. UNDERWOOD, JR.
J.S.C.

CHECK ONE: ___ FINAL DISPOSITION **_X_ NON-FINAL DISPOSITION**