

**Standish v Village of Greenport**

2007 NY Slip Op 31636(U)

June 7, 2007

Supreme Court, Suffolk County

Docket Number: 0021611/2004

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK  
POST-NOTE MOTION PART - SUFFOLK COUNTY

**P R E S E N T :**

Hon. ROBERT W. DOYLE  
Justice of the Supreme Court

MOTION DATE 2-1-07  
ADJ. DATE 3-22-07  
Mot. Seq. # 003 - MG; CASE DISP

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GABRIELLE STANDISH, an infant under the age	:	BENJAMIN L. HERZWEIG, ESQ.
of fourteen (14) years, by her parents and natural	:	Attorney for Plaintiffs
guardians, BARRY STANDISH and DAWN	:	629 Route 112, Suite 6
STANDISH,	:	Patchogue, New York 11772
	:	
Plaintiffs,	:	DEVITT SPELLMAN BARRETT, LLP
	:	Attorneys for Deft Village of Greenport
- against -	:	50 Route 111
	:	Smithtown, New York 11787
THE VILLAGE OF GREENPORT and THE	:	
GREENPORT VILLAGE DAY CAMP,	:	
	:	
Defendants.	:	

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Upon the following papers numbered 1 to 26 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 23; Notice of Cross Motion and supporting papers       ; Answering Affidavits and supporting papers 24 - 25; Replying Affidavits and supporting papers 26; Other       ; ~~and after hearing counsel in support and opposed to the motion~~ it is,

**ORDERED** that the motion by defendant Village of Greenport for summary judgment dismissing plaintiffs' complaint is granted.

Plaintiffs Barry Standish and Dawn Standish commenced this action on behalf of their daughter, infant plaintiff Gabrielle Standish, to recover damages for personal injuries allegedly sustained by Gabrielle when she was attending a summer camp run by the Village of Greenport (hereinafter "the Village"). The Court notes that although denominated as a defendant, Greenport Village Day Camp is operated by the Village of Greenport. Gabrielle, who was 10 at the time of the incident, allegedly lost a permanent front tooth and sustained various mouth and facial injuries when she slipped and hit her face on an aluminum, dome-shaped climber (referred to in the pleadings as "dome monkey bars") installed in the camp's play area. The bill of particulars alleges, among other things, that the Village was negligent in failing to adequately supervise the playground, in failing to enforce the camp's rules of conduct, and

in failing to hire sufficient personnel to supervise the play area. It further alleges that the camp personnel failed to properly respond to Gabrielle's injuries, which caused her to suffer additional injuries.

The Village now moves for summary judgment dismissing plaintiffs' complaint on the grounds that this was an injury that occurred spontaneously and one that no amount of supervision could prevent. In support of its motion, the Village submits, *inter alia*, copies of the pleadings; transcripts of Gabrielle and Dawn Standish's deposition testimony; pictures of the camp's play area; and affidavits from Linda Ortiz, the camp director, and Joanne Jackson, the camp supervisor. Plaintiffs oppose the Village's motion arguing that a genuine issue of fact exists as to the Village's degree of supervision or lack thereof, which plaintiff claims was the proximate cause of Gabrielle's injuries. Plaintiffs argue that the employees of the Village failed to ensure that the dome monkey bars were dry prior to Gabrielle playing on them. Plaintiffs submission in opposition includes the deposition testimony of Linda Ortiz, who stated that the information she had about the incident was told to her by the camp supervisor, Joanne Jackson.

According to Gabrielle's deposition testimony, on the morning of the incident date it rained. She testified that when they went outside to play later that day, there were approximately 80 children outside playing in two separate areas. Gabrielle testified that she was playing a game with other children in her group, and that she went on and off the dome monkey bars a few times before her accident. According to her testimony, the dome monkey bars were Gabrielle's favorite and she played on them frequently. Gabrielle testified that at the time of the accident she was squatting toward the top of the dome monkey bars and had both hands on the bars when she began to slip. She testified that she fell forward into the bars and banged her chin and hit her tooth. She testified further that once she fell, it took about three to four minutes for one of the counselors to help her, and that Randy and another counselor who were outside just stood staring at her. Gabrielle testified that Jo-Jo (the supervisor) was not outside when the incident took place, rather she came out of the building, and carried Gabrielle inside to the bathroom after the incident.

In her affidavit, Ms. Ortiz states that she personally trained each camp counselor; that the dome monkey bars were age-appropriate for the infant plaintiff; and that she was in the camp office when the incident took place. Ms. Ortiz' affidavit states that two counselors and Joanne Jackson (or "Jo-Jo" as Gabrielle knew her) were outside, and Ms. Jackson saw the accident and told Ms. Ortiz. Ms. Ortiz' affidavit further avers that the supervision was appropriate, and after the accident she immediately called Gabrielle's parents. According to the affidavit of Joanne Jackson, she witnessed Gabrielle playing appropriately on the dome monkey bars and without warning Gabrielle slipped and fell into the bar hitting her chin. Ms. Jackson's affidavit also states that Randy, one of the counselors, ran over and immediately picked up Gabrielle after she fell. It states that she and Randy carried Gabrielle inside and that she tended to Gabrielle's injuries by washing out her mouth with water and applying pressure to the injury.

To obtain summary judgment, the movant must establish his cause of action or defense "sufficiently to warrant the court as a matter of law in directing judgment" in his favor (CPLR 3212[b]), and he must do so "by tender of evidentiary proof in admissible form" (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1055, 1067, 416 NYS2d 790 [1979]; see, *Zuckerman v City of New*

*York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Mere conclusions, unsubstantiated allegations or assertions are insufficient to raise a triable issue of fact in opposition to a motion for summary judgment (*Zuckerman v New York, supra*). In determining a motion for summary judgment, the court's function is not to resolve issues of fact or to determine matters of credibility but rather to determine whether issues of fact exist precluding summary judgment (*see, Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]).

The duty of care owed by persons supervising children in a summer camp setting is that which a reasonably prudent parent would observe in comparable circumstances (*see, Kosok v Young Men's Christian Assn.*, 24 AD2d 113, 700 NYS2d 327, *aff'd*, 19 NY2d 935 [1965]). In such a setting, constant supervision is neither feasible nor desirable because "one of the benefits of such an institution is to inculcate self-reliance in the campers which an overly protective supervision would destroy" (*Kosok v Young Men's Christian Assn., supra at 115; see, also, Gustin v Association of Camps Farthest Out, Inc.*, 267 AD2d 1001, 700 NYS2d 327 [1999]). In addition, summer camps, like schools, are not insurers of safety, since they cannot reasonably be expected to continuously supervise and control all movements and activities of the campers (*Lesser v Camp Wildwood*, 282 FSupp 2d 139, 147 [2003]; *Mirand v City of New York*, 84 NY2d 44 [1994]). They do, however, have a duty to provide supervision to ensure the safety of those children in their care, and are liable for foreseeable injuries proximately caused by the absence of adequate supervision (*see, Douglas v John Hus Maravian Church of Brooklyn, Inc.*, 8 AD3d 327, 778 NYS2d 77 [2004]; *Kandkhorov v Pinkhasov*, 302 AD2d 432, 756 NYS2d 65 [2003]).

In addition, liability for negligent supervision in a camp or school setting does not lie absent a showing that it constitutes a proximate cause of the injury sustained (*Lopez v Freeport Union Free School District*, 288 AD2d 355, 734 NYS2d 97 [2001]; *see, Schlecker v Connetquot Cent. School Dist.*, 150 AD2d 548, 541 NYS2d 127 [1989]). Where, as here, the accident occurs in so short a span of time that even the most intense supervision could not have prevented it, any lack of supervision is not a proximate cause of the injury (*Reardon v Carle Place Union Free School Dist.*, 27 AD3d 635, 813 NYS2d 150 [2006]; *see, Cerrato v Carapella*, 22 AD3d 701, 804 NYS2d 402 [2005]; *Tanon v Eppler*, 5 AD3d 667, 668, 774 NYS2d 718 [2004]).

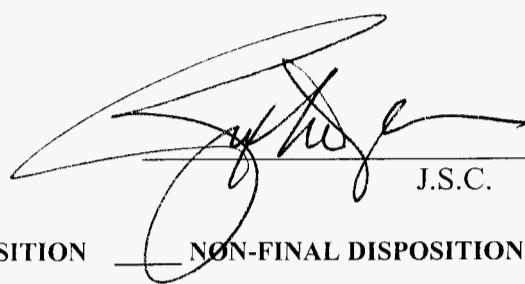
The Village established, *prima facie*, that it was not negligent in its supervision of the playground. Moreover, even if this court were to find the existence of a triable issue of fact with respect to the Village's allegedly negligent supervision, there has been no showing that the lack of supervision was the proximate cause of Gabrielle's injuries (*Lopez v Freeport Union Free School District, supra*). Here, Gabrielle was properly playing on the dome monkey bars. As she played on them with both hands and feet, her feet suddenly began to slip causing her to fall face first into the bar. This act was a sudden and unforeseen event which no amount of supervision could have prevented. There is only speculation that the dome monkey bars were wet. Gabrielle does not remember whether they were wet when she played on them, and she testified that she was on and off them more than once without incident before she fell. Speculation alone is insufficient to defeat a motion for summary judgment (*see, Zuckerman v New York, supra*).

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Last y, the record is devoid of evidence supporting plaintiffs' claim that the camp personnel failed to provide adequate medical attention for Gabrielle's injuries. To the contrary, Ms. Jackson assisted Gabrielle immediately and tended to her injury by washing the blood out of her mouth and applying pressure to the wound. Ms.Ortiz telephoned both of Gabrielle's parents, and Gabrielle's father arrived at the camp within five minutes declining Ms. Jackson's offer to call for an ambulance. Gabrielle was placed directly in the care of family thereafter.

Accordingly, the Village's motion for summary judgment is granted.

Dated: JUN 07 2007

  
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J.S.C.

X  FINAL DISPOSITION        NON-FINAL DISPOSITION