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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. ROLANDO T. ACOSTA Justice

PART 61

Index Number : 100054/2004
TARULLI, DANIELLE
VS
AUGUST AICHORN CENTER
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

is motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 (CA-5)
Answering Affidavits — Exhibits	2
Replying Affidavits	3

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/20/07

SO ORDERED

ROLANDO T. ACOSTA J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Danielle Tarulli,

Plaintiff,

– against –

The August Aichhorn Center for Adolescent Residential Care, Inc.,

Defendant.

DECISION/ORDER

Index No. 10054/04

Seq. No. 2

Present:

Rolando T. Acosta
Supreme Court Justice

The following documents were considered in reviewing defendant's motion for an order granting summary judgment dismissing the complaint:

Papers	**Numbered**
Notice of Motion & Affirmation	**1 (Exhibits A-J)**
Affirmation in Opposition	**2**
Reply Affirmation	**3**

Plaintiff was 14 years old when she was admitted to the August Aichhorn Center on June 3, 1999. She was brought to the Center by her mother due to a history of uncontrollable behavior including multiple runaways. Plaintiff was placed on the third floor, which consisted of eight rooms with one resident occupying each room. Two child care workers supervised the floor between 11:00 p.m. and 7:00 a.m., making hourly checks of each room.

Plaintiff's room contained four metal casement windows secured in place with tamper proof screws. Horizontal metal bars were situated approximately one foot apart directly outside the windows and embedded in the masonry.

On June 27, 1999, at approximately 12:30 a.m., 5'10" 200 lbs. plaintiff pried a window in her room with a spoon enough to get her fingers in between the top and lower window. She then pulled the bottom window toward her until she was able to break the metal track and remove the window. A child care worker heard a noise and stuck her head

in the room, but plaintiff sat on her bed and told the worker that she had dropped her radio. After child care worker left, plaintiff tied sheets together and attempted to lower herself out the window, but fell and injured herself.

Defendant moves for an order granting summary judgment dismissing the complaint on the grounds that plaintiff's actions in attempting to escape was the sole proximate cause of her injuries. Plaintiff contends that the facility knew the plaintiff was a chronic runaway, who was emotionally disturbed, and should have prevented the escape by better supervision.

Defendant has established its prima facie entitlement to summary judgment dismissing the complaint. First, the Center took necessary precautions to protect plaintiff. She was placed on a floor with 24 hour supervision, with bolted windows and horizontal bars in her room. And although the Center knew that plaintiff was a runaway risk, it had no notice that plaintiff would attempt to escape out a third floor metal casement window secured with tamper resistant screws. Indeed, "[a] school or similar facility is not required to provide any greater degree of supervision than which a parent of ordinary prudence would observe in comparable circumstances." Jamel v. City of New York, 24 A.D.3d 301, 304 (1st Dept. 2005), citing Mirand v City of New York, 84 NY2d 44, 49 (1994); see also David v County of Suffolk, 1 NY3d 525 (2003); Rivera v Board of Educ. of City of Yonkers, 19 AD3d 394, 395 (2005).

Second, there is no doubt that plaintiff's actions were the sole proximate cause of her injury. See Krosky v. County of Schenectady, 240 A.D.2d 879 (3rd Dept. 1997); Hernandez v. State of New York, 46 A.D.2d 712 (3rd Dept. 1974). It should also be noted that plaintiff, although only 14 years old, was strong enough to pry open the window and clever enough to hide it from the child care worker.

The Center having established it entitlement to summary judgment, the burden shifted to plaintiff to raise triable issues, which it has failed to do. Plaintiff merely posits that there are triable issues of fact because the Center knew that plaintiff was not going to stay in the Center and had a chronic history of escaping institutions. Without more, these facts are insufficient to prevent summary judgment. Accordingly, it is hereby

ORDERED that defendant's motion for an order pursuant to CPLR 3212 dismissing the complaint is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: July 20, 2007

ENTER

SO ORDERED

Rolando T. Acosta, J.S.C.

ROLANDO T. ACOSTA
J.S.C.

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FILED

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