Silverman v Hewlett-Woodmere Union Free School Dist.
2008 NY Slip Op 32406(U)
August 21, 2008
Supreme Court, Nassau County
Docket Number: 7254-06/
Judge: Michele M. Woodard

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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CHARLES REUVEN SILVERMAN, an infant by his mother and natural guardian, SIGAL SILVERMAN and SIGAL SILVERMAN, Individually,

Plaintiff,

-against-

HEWLETT-WOODMERE UNION FREE SCHOOL DISTRICT,

Defendant.

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MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 16
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DECISION AND ORDER

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Defendant Hewlett-Woodmere Union Free School District ("School District") moves for an order granting it Summary Judgment as to the Plaintiffs' complaint.

Plaintiffs commenced this action for injuries allegedly sustained by the Plaintiff Charles Reuven Silverman (the "Plaintiff") on August 3, 2005 at approximately 10:30 A.M.. Plaintiff, not yet five years old at the time of the incident, was attending a summer preschool program at the Franklin Early Childhood Center, Hewlett, N.Y. run by School District. The Plaintiffs allege the infant Plaintiff was pushed, shoved, jostled, tripped or otherwise caused to fall by another infant identified by Plaintiff as "dark" or "brown," "Sean," (hereinafter referred to as Sean; the surname of Sean has not been revealed during the course of litigation), who was also attending the summer program (see Exhibit E, pgs. 22-27; Exhibit F, pgs. 7-10 annexed to School District's motion). Plaintiffs contend the summer program was notified that the Plaintiff was premature at birth and he was receiving occupational and physical therapy during the summer session. Plaintiffs state that the Plaintiff's mother, Sigal Silverman, a Plaintiff herein, sought additional aides for the Plaintiff's class and another aide (for a total of two aides plus a teacher) were assigned to the class.

While the teacher of the Plaintiff's class, Ms. Jodi Hewlett, did indicate she noticed that the Plaintiff had a tendency to fall (see Exhibit J, pgs. 18-19, 23 annexed to School District's motion), no special needs or infirmities were set forth in the Plaintiff's application to the summer program

(see Exhibit H, Exhibit G, pgs. 27-28 annexed to School District's motion). Also, School District contends Plaintiff merely fell into another student (see Exhibit I, pgs. 7-11 annexed to School District's motion). Ryan Stanisz was an assistant counselor/teaching assistant at the summer preschool program attended by Plaintiff on August 3, 2005. Mr. Stanisz stated he was within twenty (20) feet of Plaintiff when he was not looking where he was going and bumped into another child causing the Plaintiff to fall back (see Exhibit L, pgs. 10-14 annexed to School District's motion). Mr. Stanisz believed there were "others," i.e., teachers, aides, etc., watching the children when the incident occurred (Exhibit L, pg. 16). Ms. Hewlett stated that she was at the front of the snack line in the cafeteria tending to the rest of the class which consisted of twenty children when the Plaintiff fell. Mr. Stanisz was present at the incident site as was another teacher's aide (see Exhibit J, pgs. 29-30 annexed to School District's motion).

The court notes that the Plaintiff stated, in his version of the events, that he was "pushed out of nowhere" (see Exhibit F, pg. 13 annexed to School District's motion).

Schools are obligated to exercise such care of their students as a part of ordinary prudence would observe in comparable circumstances (*David v County of Suffolk*, 1 NY3d 525 [2003]).

Schools are not insurers of safety as they cannot reasonably be expected to continuously supervise and control all movements and activities of students (*Doe v Orange-Ulster Board of Cooperative Educational Service*, 4 AD3d 387 [2d Dept 2004]).

Although schools are not insurers of safety, they are obligated to exercise such care of their students as a parent of ordinary prudence would observe in comparable circumstances (*David v County of Suffolk, supra*).

Schools cannot reasonably be expected to continuously supervise and control all movements and activities of students (*Mirand v City of New York*, 84 NY2d 44 [1994]; *Doe v Orange-Ulster Board of Cooperative Educational Services, supra*) and are not to be held liable for every thoughtless or careless act by which one pupil may injure another (*Johnsen v Cold Spring Harbor Central School District*, 251 AD2d 548 [2d Dept 1998]).

As schools are under a duty to adequately supervise students in their charge, they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (*Mirand v City of New York, supra*).

For a school to breach its duty to adequately supervise students in its charge so as to be liable for foreseeable injuries proximately related to the absence of adequate supervision, the school must have sufficiently specific knowledge or notice of the dangerous condition which caused the injury in that the third-party acts could reasonably have been anticipated (*Whitfield v Board of Educ. of City of Mount Vernon*, 14 AD3d 552 [2d Dept 2005]; *In-Ho Yu v Korean Central Presbyterian Church of Queens*, 303 AD2d 369 [2d Dept 2003]; *Smith v East Ramapo Central School District*, 293 AD2d 521 [2d Dept 2002]; *Velez v Freeport Union Free School District*, 292 AD2d 595 [2d Dept 2002]).

Actual or constructive notice to a school of prior similar conduct is generally required to find that a school has breached its duty to provide adequate supervision as a result of injuries caused by the acts of fellow students because school personnel cannot reasonably be expected to guard against all of the sudden spontaneous acts that take place among students on a daily basis (*Mirand v City of New York, supra*).

An injury caused by the compulsive unanticipated act of a fellow student ordinarily will not give rise to a finding of negligence by a school, absent proof of prior conduct that could have put a reasonable person on notice to protect against the injury causing act (*Convey v City of Rye School District*, 271 AD2d 154 [2d Dept 2000]).

To find that a school breached its duty to provide adequate supervision of students, in context of injuries caused by acts of fellow students, a Plaintiff must show that the school had sufficiently specific knowledge or notice of the dangerous conduct which caused the injury, that is, that the third party acts could reasonably have been anticipated (*Velez v Freeport Union Free School District, supra*).

Sufficiently specific knowledge or notice generally requires actual or constructive notice to the school of prior similar conduct, and an injury caused by the impulsive, unanticipated act of another student will ordinarily not give rise to a finding of negligence (*Calabrese v Baldwin Union Free School District*, 294 AD2d 388 [2d Dept 2002]). Here, as noted, there was absolutely no history as to "Sean" and the infant Plaintiff nor "Sean" individually.

The record clearly reflects that the School District did not have actual or constructive notice, as required for a finding of liability to an injured student on the theory of inadequate

supervision, of prior similar conduct on the part of "Sean" who allegedly injured the infant Plaintiff with his push, shove, etc., and thus, the School District is not liable in negligence for injuries allegedly sustained by the infant Plaintiff (*Calabrese v Baldwin Union Free School District, supra*).

There is no indication that more intense supervision could have prevented the incident (*Navarra v Lynbrook Public Schools*, 289 AD2d 211 [2d Dept 2001]; *Ancewicz v Western Suffolk BOCES*, 282 AD2d 632 [2d Dept 2001]). Short of prohibiting the infant Plaintiff from engaging in the summer program, there was no way to insure that incidents such as the one herein would not occur.

Where an incident occurs in so short a span of time that even the most intense supervision could not have prevented it, lack of supervision is not the proximate cause of the injury and summary judgment in favor of the school district is warranted (*Mayer v Mahopac Central School District*, 29 AD3d 653 [2d Dept 2006]).

That is the situation here.

Clearly, as noted, the school had no previous issues with "Sean" and specifically between Sean and the Plaintiff. If Plaintiff's incident occurred due to his own inattentiveness, the record reveals the response was adequate to get him needed assistance quickly. Thus, in either scenario–Plaintiff was pushed or Plaintiff fell–the School District is not responsible.

School District's conduct is judged by the "reasonable parent standard." Plaintiffs would seek to impose an unreasonable subjective standard wherein each student would have a teacher and/or aide within inches of his or her person to almost insure no problem could occur. School districts are not required to adhere to such a standard.

Based on the foregoing, the Defendant's application for Summary Judgment is **granted**.

This constitutes the **DECISION** and **ORDER** of the Court.

DATED: August 21, 2008
Mineola, N.Y.

ENTER:

HON. MICHELE M. WOODARD
J.S.C.

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