Carson v Baldwin Union Free School Dist.
2010 NY Slip Op 30806(U)
March 31, 2010
Supreme Court, Nassau County
Docket Number: 9879/08
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

TRIAL/IAS PART 32
NASSAU COUNTY

SINKIA CARSON, an infant under the age of 14 years, by his mother and natural guardian, PATRICIA CARSON,

Plaintiff,

Index No.: 9879/08
Motion Seq. No.: 01
Motion Date: 01/28/10

- against -

BALDWIN UNION FREE SCHOOL DISTRICT and BALDWIN SENIOR HIGH SCHOOL,

Defendants.

The following papers have been read on these motions:

	Papers Numbered
Notice of Motion for Summary Judgment, Affirmation and Exhibits	1
Affirmation in Opposition	2
Affirmation in Reply	3

Defendants move, pursuant to CPLR § 3212, for an order granting summary judgment and dismissing plaintiff's complaint. Plaintiff opposes defendants' motion.

This personal injury action arises from a slip and fall accident on September 27, 2007. Plaintiff, Sinkia Carson, a tenth grade student at Baldwin High School, while in his sixth period gym class was exiting the gym to go outside to run the mile, went to step over volleyball netting that was in front of the gym doors and caught his foot in said netting causing him to allegedly sustain personal injuries. On or about April 8, 2008, plaintiff commenced the action by service of a Summons and Verified Complaint. Issue was joined on June 24, 2008.

Plaintiff alleges two causes of action. The first is that defendants failed to provide adequate supervision. The second cause of action is that defendants were negligent in allowing a dangerous condition to exist.

With respect to the first cause of action, plaintiff testified that his gym class, consisting of approximately thirty students, was being supervised by one gym teacher. Plaintiff further testified that, on the day of the accident, he was instructed by said gym teacher to use the doors to the gym to go outside. The doors were propped open by pieces of wood and there was volleyball netting inside the doors right in front of them. The volleyball posts were in the corner of the gym and were not being used that day. The volleyball netting was on the floor, across in the front of the left side of the door and a little bit of the right side. It was allegedly draped on the floor in front of the doorway. Plaintiff caught his foot on the netting when attempting to exit said doorway.

Plaintiff argues that the issues in this case involve more than the simple question of whether one teacher supervising thirty students was or was not adequate, but that the issues in this case involve general premises liability issues and the issue of whether defendant provided not only adequate but also proper supervision over the students and the activities in which the students were involved.

Defendants submit that, while it is well settled that school districts have a duty to adequately supervise the students in their charge and will be held liable for those foreseeable injuries which are proximately related to the absence of adequate supervision, a school district is under no obligation to provide constant supervision of its students. Defendants state that a school's duty is to act as a reasonably prudent parent would have acted under similar

circumstances. Defendants therefore argue that, given that the defendants are held to the standard of a reasonably prudent parent under similar circumstances and the fact that there was one teacher supervising thirty high school students, it provided adequate supervision to the plaintiff in the case at bar. Defendants claim that "[t]o raise a question of fact, plaintiff's counsel attempts to combine the allegations of adequate supervision with the allegations that the volleyball net was a dangerous condition. These two issues are separate and distinct. That is, whether or not the school district provided adequate supervision to plaintiff has nothing to do with whether or not the school district purportedly allowed a dangerous condition to exist. Moreover, plaintiff's counsel has set forth nothing to suggest that the supervision to Sinkia was inadequate. There is no testimony or evidence that would tend to suggest that had the school district provided additional supervision to Sinkia, that he would not have tripped over the volleyball netting."

With respect to the second cause of action, alleging that defendant was negligent in allowing a dangerous condition to exist, defendant's argue that the volleyball netting on the floor was an open and obvious condition and that there can be no negligence on the part of a defendant when an injured plaintiff was actually aware of the open and obvious condition prior to his or her injury. Defendants state that, according to his deposition testimony, plaintiff knew that the volleyball netting was on the floor because it was always there on the prior occasions that he was in the gym, thus confirming that the condition of said volleyball netting was open, obvious and readily observable. Defendants also claim that no evidence has been provided to suggest that the volleyball netting was an inherently dangerous condition. Defendants submit that, since plaintiff clearly had prior knowledge that the volleyball netting was in the area where

[* 4]

he fell, defendants are entitled to summary judgment as a matter of law.

Plaintiff contends that the open and obvious nature of an allegedly dangerous condition does not preclude a finding of liability against the defendants. Plaintiff states that, under the law as it now exists, the open and obvious nature of a dangerous condition does not absolve a defendant of liability, but instead presents an issue of fact as to the plaintiff's comparative fault. *See Cupo v. Karfunkel,* 1 A.D.3d 48, 767 N.Y.S.2d 40 (2d Dept. 2003). Plaintiff argues that while volleyball equipment by its nature is obviously not an inherently dangerous condition, the dangerous condition alleged in this case is not the volleyball equipment itself, but the fact that the netting was left lying on the floor of the gym directly in front of the doors. "In this case the volleyball netting was not being used at the time of the accident for its normal purpose. Instead, the netting was left lying around on the floor directly in front of the doors used by the students to leave the building. It is submitted that, under the circumstances surrounding the particular situation in this case, there are questions of fact as to whether the condition- as described-was an inherently dangerous condition and as to whether the condition posed an undue risk of injury."

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital,* 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York,* 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. *See Friends of Animals, Inc. v.*

Associated Fur Mfrs., Inc., 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. *See* CPLR § 3212 (b); *Olan v. Farrell Lines Inc.,* 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. S*ee Gilbert Frank Corp. v. Federal Ins. Co.,* 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

Summary judgment is a drastic remedy which should not be granted when there is any doubt about the existence of a triable issue of fact. *See Sillman v. Twentieth Century- Fox Film Corp.*, *supra*. It is nevertheless an appropriate tool to weed out meritless claims. *See Lewis v. Desmond,* 187 A.D.2d 797, 589 N.Y.S.2d 678 (3d Dept. 1992); *Gray v. Bankers Trust Co. of Albany, N.A.,* 82 A.D.2d 168, 442 N.Y.S.2d 610 (3d Dept. 1981).

Based on the record before it, the Court finds that defendant has made a *prima facie*

showing of entitlement to judgment as a matter of law with respect to the first cause of action. Defendant has demonstrated that the accident was not the result of inadequate or poor supervision. There is nothing offered that would place in issue the showing that the alleged lack of adequate supervision was a proximate cause of the injury. A school is not liable if there is no indication that more intense supervision could have diverted the accident. *See Navarra v. Lynbrook Public Schools*, 289 A.D.2d 211, 733 N.Y.S.2cd 730 (2d Dept. 2001). *See also Odekirk v. Bellmore-Merrick Central School District*, 70 A.D.3d 910, 895 N.Y.S.2d 184 (2d Dept. 2010) (holding that when an accident occurs in so short a span of time that even the most intense supervision of students in the school's charge could not have prevented it, lack of supervision is not the proximate cause of the injury); *Paragas v. Comsewogue Union Free School District*, 65 A.D.3d 1111, 885 N.Y.S.2d 128 (2d Dept. 2009); *Knightner v. William Floyd Union Free School District*, 51 A.D.3d 876, 857 N.Y.S.2d 726 (2d Dept. 2008); *Ronan v. School District of City of New Rochelle*, 35 A.D.3d 429, 825 N.Y.S.2d 249 (2d Dept. 2006).

Accordingly, under the authorities cited above, plaintiff's cause of action of negligent supervision must be dismissed.

However, the Court finds that with respect to plaintiff's second cause of action, that defendants were negligent in allowing a dangerous condition to exist, there are indeed questions of fact as to whether the placement of volleyball netting near the doors of the gym was an inherently dangerous condition and whether the condition posed an undue risk of injury. Unlike the case cited by defendants, *Kaufman v. Lerner New York*, 41 A.D.3d 660, 838 N.Y.S.2d 181 (2d Dept. 2007), in which the plaintiff tripped while attempting to step over the base of a rolling clothing rack located inside the dressing room area corridor of the defendant's store, while rolling clothing racks are expected to be in dressing rooms that is not necessarily the case with

the volleyball netting in front of the gym door. This is especially true given the fact that the volleyball nets were not even being utilized during the gym class.

The Court holds that defendants have failed to demonstrate, as a matter of law, that the condition and location of the volleyball netting in the case at bar was not an inherently dangerous condition. As such, defendants' motion to dismiss the second cause of action is denied.

The parties are hereby ordered to appear at the DCM Trial Part of the Nassau County Supreme Court on the 21th day of April, 2010 at 9:30 a.m. to proceed with trial in accordance with the holdings of this decision and order.

This constitutes the decision and order of this Court.

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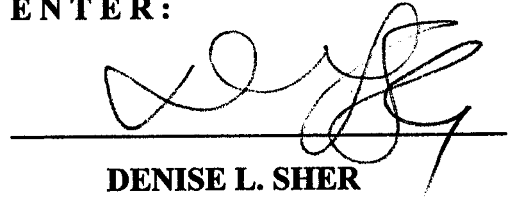

DENISE L. SHER
A.J.S.C.

Dated: Mineola, New York
March 31, 2010

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