

Vazquez v Bellmore Union Free School Dist.

2011 NY Slip Op 30773(U)

March 18, 2011

Supreme Court, Nassau County

Docket Number: 22893/07

Judge: Michele M. Woodard

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

SCAN

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LAUREN VAZQUEZ, an infant under the age of fourteen
by her Mother and Natural Guardian, INAIS VAZQUEZ,
and INAIS VAZQUEZ, Individually,

Plaintiffs,

-against-

**MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 11
Index No.: 22893/07
Motion Seq. No.: 02**

BELLMORE UNION FREE SCHOOL DISTRICT,

Defendant.

DECISION AND ORDER

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Papers Read on this Motion:

Defendant's Notice of Motion	02
Plaintiffs' Affirmation in Opposition	xx
Defendant's Reply Affirmation	xx

The defendant, Bellmore Union Free School District, in the above captioned negligence action moves for an Order of this Court, pursuant to CPLR §3212, awarding Summary Judgment and dismissing the Complaint of the plaintiffs, Lauren Vazquez ("Lauren") and Inais Vazquez, alleging injuries sustained resulting from a fall while on a school sponsored field trip.

Plaintiffs commenced this action by filing a summons and complaint in December, 2007 alleging, inter alia, that defendant was negligent in that it failed to provide adequate supervision which caused Lauren to trip and fall, and that the defendant failed to properly instruct the parent chaperones regarding supervision of the students during the field trip.

PROCEDURE

Defendant filed the instant motion, arguing that its alleged failure to train staff and provide adequate supervision, was not the cause of Lauren's accident and resulting injuries. Further, there is no evidence on record to support any such breach of duty on the part of the defendant. In support of its

motion, defendant submits as evidence, inter alia, transcripts of testimony from: Lauren¹; student and nonparty witness, Kenneth Andreas (“Kenny”); classroom teacher, Maureen McCarville; and parent chaperone, Paul Deturris.

The plaintiffs, in opposition, allege that the defendant’s supervision was inadequate in that Kenny had been previously warned about running through the museum and had he been properly supervised, the accident would not have occurred. They further argue that the accident was the result of the defendant’s failure to properly train its staff and parent chaperones. The plaintiffs also argue that a scavenger hunt was included in the afternoon of the field trip and as such hunt encouraged running and reckless conduct by certain students, the dangerous conduct was foreseeable. In addition, because the supervising adults constantly reminded the students not to run, the defendant was aware that students would be running during the field trip.

FACTS

On or about September 28, 2006, the sixth grade class of the Shore Road Elementary School in Bellmore, NY, participated in a planned field trip to the Intrepid Sea, Air and Space Museum in New York City. The entire group included 180 students, 8 classroom teachers, parent chaperones and teaching assistants. Students were assigned to small groups of 5 to 6, and they were to be supervised by one responsible adult. Lauren was assigned to Mr. DeTurriss’ group, which included Kenny.

At about 2:00 p.m. near the end of the trip, Mr. DeTurriss directed the group to move from the scuba exhibit to the next exhibit; however, he remained behind for about 5 to 10 minutes to observe a particular display. Lauren alleges that the other group members started running when they saw an amusement “ride” outside the museum. This was not a part of the trip and the students were not

¹Plaintiff was examined on May 21, 2007 at a Municipal Law §50-h hearing and again on May 25, 2010 for an Examination Before Trial.

scheduled to go on that ride. Further, Mr. DeTurrís did not direct the students to go to the ride. Lauren testified that while she was walking away from the scuba exhibit, Kenny pushed her while he was running and caused her to trip and fall on the molding in an exhibit doorway. The plaintiff sustained a fracture to her wrist which required corrective surgery and medical treatment.

DISCUSSION

It is well settled that although schools are under a duty to adequately supervise the students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision, they are not insurers of the safety of their students, for they cannot be reasonably expected to continuously supervise and control all of the students' movements and activities (*Totan v. Board of Educ. of City of New York*, 133 AD2d 366 [2d Dept 1987]). In order to find that a school has breached its duty to provide adequate supervision in the context of injuries caused by the acts of fellow students, the plaintiff must show that the school had sufficiently specific knowledge or notice of the dangerous conduct which caused injury and that the third-party acts could reasonably have been anticipated (*Hernandez v. Christopher Robin Academy*, 276 AD2d 592 [2d Dept 2000]).

Actual or constructive notice to the school of prior similar conduct is generally required because school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students during the course of their activities (*Convey v. Rye*, 271 AD2d 154 [2d Dept 2000]). An injury caused by the impulsive, unanticipated act of a fellow student ordinarily will not give rise to a finding of negligence absent proof of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act (see *Mirand v City of New York*, 84 NY2d 44 [1994]).

In the instant matter, the school defendant sustained its burden of establishing that it had no actual or constructive notice of any dangerous conduct by Kenny Andreas or by any other student. At

her examination before trial, Ms. Mc Carville testified that she was not aware of any students committing acts that would be considered dangerous or that any of the students required reprimanding or discipline while on the field trip. Furthermore, there is no evidence that any student, other than Lauren, sustained injury as a result of the conduct described by the plaintiffs nor is there evidence that Kenny had caused injury to other students or museum patrons during the field trip or that he had any history of prior disciplinary issues. The only evidence in the record is that Lauren observed the chaperone “reprimanding” Kenny once for running and twice for “touching things”. It is noted; however, that in response to an inquiry as to whether Kenny was “yelled at” or “told”, plaintiff testified that Kenny was “told” to stop running. She further testified that Kenny immediately ceased the activity when directed.

Moreover, there is no evidence that any purported negligence on the part of the school was the proximate cause of the injuries sustained. According to the deposition testimony of the infant plaintiff, the incident lasted less than one minute (Exhibit F., Tr. Lauren Vazquez, p. 36, ln. 15,16). Where an 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 the proximate cause of the injury and summary judgment in favor of the school defendants is warranted (see *Esponda v City of New York*, 62 AD3d 458 [2d Dept 2009]).

Further, much is made of the fact that prior to the accident, Mr. Deturris remained behind the group to observe a display in the scuba room. Implicit in this reference is the argument that had he been in the direct vicinity of where Lauren was walking, Kenny would not have made contact with her. In other words, plaintiffs appear to suggest that the school chaperones and teachers were to guard and control the step of each and every child, particularly Kenny’s, during the course of the field trip. This is

not reasonable or realistic as schools cannot be held liable for every thoughtless or careless act by which one student may injure another (see *Convey v City of Rye*, supra). Finally, a teacher's and/or chaperone's duty to supervise children requires such care of them as a parent of ordinary prudence would observe in comparable circumstances (*Esponda v City of New York*, 62 AD3d 458 [2d Dept 2009]).

In light of the foregoing, not only have plaintiffs failed to establish proximate cause, there is no clear evidence as to what or who caused the accident. Lauren initially testified that she saw Kenny running before the accident (Exhibit D., Tr. Lauren Vazquez, p. 16, ln. 10 - 19). She then testified said that she *did not* see Kenny running before the accident (Exhibit D., Tr. Lauren Vazquez, p. 37, ln. 15 - 17) Further, she, Kenny and Mr. Deturris testified that Lauren tripped over a molding (Exhibit D., Tr. Lauren Vazquez, p. 34 , ln. 15 - 17, p. 44, ln. 14 -17, Exhibit H., Tr. Kenneth Andreas, p. 30, ln. 9, 10, Exhibit I, Tr. Paul DeTurriss, p. 17, ln. 3-10). Not only is the infant plaintiff's testimony inconsistent, it is speculative at best.

Finally, plaintiffs' argument that the defendant encouraged or caused the alleged dangerous conduct by its inclusion of scavenger hunt during the end of the trip, is without merit. The only evidence indicating that children were running while participating in the hunt, is Kenny Andreas' testimony that the students were running right before the accident to complete the collection(see Exhibit H, Tr. Kenneth Andreas, p. 26, ln. 14-19, p. 27 ln. 2-25, p. 28, ln. 2). However, Lauren's testimony, which is notably more contemporaneous with the time of the accident, is that the group ran because they saw the amusement "ride" (see Exhibit D, Tr. Lauren Vasquez, p. 38, ln. 10-12). Regardless of which account is accurate, both Kenny and Lauren's testimony support that the conduct plaintiffs describe as dangerous and foreseeable, was spontaneous and could not have been prevented

by Mr. DeTurris or any other chaperone or school personnel. Further, there is no evidence in the record that the students were running at any other time.

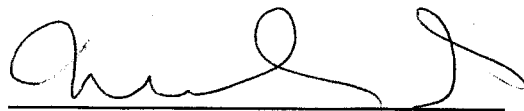
Finally, plaintiffs' reliance on the seminal case, *Mirand v City of New York*, (84 NY2d 44 [1994], supra) is misplaced as the facts of that case are distinguishable from the case at bar. There, a student expressly advised a school teacher of a specific imminent threat to her life and limb made by another student, and such attack was to occur after school. Not only did the school teacher fail to take the appropriate action, the school's security personnel assigned to address such after school incidents, could not be located at their post. Consequently, the court concluded that a jury could find negligence in the school's failure to act as the danger was foreseen, and that the school failed to comply with its own security plan. The jury could also find proximate cause in that the security personnel were completely absent at a time when security was absolutely essential (*Mirand*, supra at 51). In the instant case, the conduct of the students and/or Kenny's, does not rise to the level of a foreseeable dangerous act where the defendant could anticipate possible injury and prevent such injury by adequate supervision (see *Francisquini v New York City Board of Education*, 305 AD2d 455 [2d Dept 2003]).

Accordingly, the school defendants' motion for summary judgment is **granted** and the plaintiff's complaint is **dismissed**.

This constitutes the Decision and Order of the Court.

DATED: March 18, 2011
Mineola, N.Y. 11501

ENTER:



HON. MICHELE M. WOODARD

J.S.C.

X ENTERED

MAR 23 2011

**SARASOTA COUNTY
COUNTY CLERK'S OFFICE**