

Gonzalez v New York City Dept. of Educ.

2014 NY Slip Op 30131(U)

January 16, 2014

Supreme Court, New York County

Docket Number: 100136/2011

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Saliann Scarpulla

PART 19

Index Number : 100136/2011
GONZALEZ, JADE L.
vs.
DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

Justice
FILED

JAN 21 2014

COUNTY CLERK'S OFFICE
-NEW YORK

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is determined in
accordance with the accompanying decision/order.

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

Dated: 1/10/14

JAN 17 2014

_____, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
JADE L. GONZALEZ, AN INFANT BY HER MOTHER
AND NATURAL GUARDIAN DEBORA CARRERO,
AND DEBORA CARRERO, INDIVIDUALLY,

Plaintiffs,

Index No: 100136/11
Submission Date: 10/2/13

-against-

DECISION AND ORDER

NEW YORK CITY DEPARTMENT OF EDUCATION
F/K/A THE BOARD OF EDUCATION OF THE CITY
OF NEW YORK, THE CITY OF NEW YORK AND
UNIVERSITY OF SETTLEMENT,

Defendants.

-----X
For Plaintiff:
Greenstein & Milbauer, LLP
1825 Park Avenue, 9th Floor
New York, NY 10035

For Defendants:
French & Casey, LLP
29 Broadway
New York, NY 10006

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Papers considered in review of the motion for summary judgment:

- Notice of Motion 1
- Aff in Opp. 2
- Reply 3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendants New York City Department of Education f/k/a The Board of Education of the City of New York, The City of New York, and University of Settlement (collectively referred to as "University") move for summary judgment dismissing the complaint.

JAN 17 2014

On August 24, 2010, six year old plaintiff Jade Gonzalez (“Gonzalez”) was injured while attending a summer camp operated by University located at P.S. 137 at 293 East Broadway. Plaintiffs commenced this action seeking to recover damages for the injuries sustained by Gonzalez to her leg, asserting causes of action for negligent maintenance of the premises and negligent supervision.

The incident report for Gonzalez’s accident provided that “Jade was crying ran into the women’s staff bathroom, sat on the floor crossing legs onto the sink stand. While trying to get her to come out of the bathroom, she then pushed her leg against the sink stand causing her to split lower leg” and “child crossed leg on the sink stand, child pushed leg causing injury.”

Gonzalez testified at an examination before trial that on the day of the incident, she was playing ball, and had a disagreement with another girl. She ran away because she was scared of a girl named Crystal. Gonzalez ran into the bathroom in the principal’s office to hide, sat down on the floor and wrapped her legs and arms around the pedestal of the sink. She testified that she had been in that bathroom on prior occasions. According to Gonzalez, Crystal told Gonzalez’s counselor, Ms. Pam, that Gonzalez had run into the bathroom, and Ms. Pam came to the bathroom. Ms. Pam asked her to get up, but she did not because she was scared of Crystal. Ms. Pam then put her hands under Gonzalez’s armpits and pulled her out from under the sink. Her leg was cut on the jagged broken edge of the sink pedestal. She received approximately thirteen stitches in her leg.

Rashina Bolt (“Bolt”) testified at an examination before trial that she supervised the site coordinator at P.S. 137. She explained that she learned of the incident when employee Sharone Roberts (“Roberts”) called to tell her that Gonzalez had wrapped her legs around the pedestal of a sink and cut her leg and was taken to the hospital with site coordinator Nikaurys Perez (“Perez”) with her in the ambulance. Bolt explained that the accident occurred in an old teachers’ lounge that was being used as the administrative offices for the camp. The subject bathroom was to be used by staff only. She explained that the subject sink had a jagged, broken edge on the base of the pedestal, which she remembered existing since she started working there in 2008. Perez had told her that she told the custodian, a while ago, about the condition of the sink.

Pamela Ranpersaud (“Ms. Pam”) testified at an examination before trial that the children were engaged in a plant potting activity in the cafeteria before the incident occurred. She explained that Gonzalez wanted to go in the back of the cafeteria, but was told that she could not, and Gonzalez then ran out of the room. According to Ms. Pam, Gonzalez had run off a few times before, and she had spoken to Gonzalez’s mother about some prior tantrum problems. Ms. Pam followed Gonzalez to the staff bathroom, where she found Gonzalez sitting on the floor with her legs crossed under the sink. She was under the sink for a few minutes, while Ms. Pam was trying to reason with her to come out. Roberts then came in to speak to Gonzalez. He told her to please come out from under the sink because it was not safe, and she should not be there. According to

Roberts, Gonzalez “unwrapped her legs and arms from the pedestal, she moved and – moved back away from the sink as she stand – stood up and that’s when she grabbed Pam’s hand to get completely up.” According to Ms. Pam, Gonzalez was not pulled out from under the sink.

University now moves for summary judgment dismissing the complaint, arguing that (1) Gonzalez’s impulsive and reckless conduct was an unforeseeable superceding event, and thus the sole proximate cause of her injuries; and (2) University can not be liable for negligent supervision because the supervision was adequate and the injury was not foreseeable.

In opposition, plaintiffs argue that issues of fact exist as to how the accident occurred and whether University’s negligent supervision and/or negligent maintenance of the premises was a proximate cause of Gonzalez’s injury.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law and offer sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party to demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

According to University, the accident occurred when Gonzalez impulsively and recklessly ran into the staff-only bathroom, wrapped her arms and legs around a sink, and then got up after Ms. Pam and Roberts reasoned with her. Her leg was cut as she got up. However, according to plaintiffs, the accident occurred when Gonzalez ran away because she was scared, to a bathroom that she had used previously, wrapped her arms and legs around the sink pedestal with a jagged, broken edge that had been known of since at least 2008, and then was physically removed from the sink by Ms. Pam. Her leg was cut as Ms. Pam removed her from the sink.

The court first finds that issues of fact exist as to whether University can be found liable for negligent maintenance of the premises. A landowner "must act as a reasonable [person] in maintaining his [or her] property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk." *Cupo v. Karfunkel*, 1 A.D.3d 48, 51 (2nd Dept. 2003). Here, evidence was presented that the subject sink had a broken, jagged pedestal, which, according to Bolt, was known of since at least 2008. Further, Perez had told the custodian about the condition of the sink some time prior to Gonzalez's incident. Therefore, evidence has been presented to raise an issue of fact as to whether University had notice of the dangerous condition of the sink pedestal.

University argues that regardless of whether it had notice of any dangerous condition, any negligent maintenance of the premises on its part was not the proximate

cause of Gonzalez's injuries, because her act of running into the staff bathroom and wrapping her arms and legs around the pedestal of the sink was an unforeseeable superceding event. However, the court finds that because there are differing accounts as to circumstances surrounding the incident and how the incident occurred, issues of fact exist, and a finding as to foreseeability and proximate cause can not be made as a matter of law at this time.

However, the court finds that University has met its burden of establishing entitlement to summary judgment dismissing the negligent supervision claim. A summer camp is duty bound to supervise its campers as would a parent of ordinary prudence in comparable circumstances. Thus, the degree of supervision required depends largely on the surrounding circumstances and, although constant supervision in a camp setting is neither feasible nor desirable, it is plain that very young campers will in many situations require closer oversight than their older counterparts. *Phelps v. BSA*, 305 A.D.2d 335, 335-336 (1st Dept. 2003). Camps have a duty to provide supervision to ensure the safety of those children in their charge, and are liable for foreseeable injuries proximately caused by the absence of adequate supervision. *See Kandkhorov v. Pinkhasov*, 302 A.D.2d 432 (2nd Dept. 2003). 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. *Convey v. City of Rye Sch. Dist.*, 271 A.D.2d 154 (2nd Dept. 2000).

Here, University demonstrates that it provided adequate supervision during the time that the incident occurred. According to Ms. Pam's account of the circumstances surrounding the incident, she was talking to Gonzalez when Gonzalez ran out of the cafeteria. She then followed Gonzalez into the staff bathroom, where she pled with Gonzalez to get off the floor and come back to the group. According to Gonzalez, she ran to the staff bathroom and Ms. Pam arrived there only a few minutes later to try to convince Gonzalez to get up. Taking either account of the incident as true, there is no evidence of inadequate supervision. *See Lopez v. Freeport Union Free Sch. Dist.*, 288 A.D.2d 355 (2nd Dept. 2001).


In accordance with the foregoing, it is hereby

ORDERED that defendants New York City Department of Education f/k/a The Board of Education of the City of New York, The City of New York, and University of Settlement's motion for summary judgment dismissing the complaint is granted only to the extent that the claim for negligent supervision is dismissed; and it is further

ORDERED that the remaining claim for negligent maintenance of the premises is severed and shall continue.

This constitutes the decision and order of this Court.

Dated: New York, New York
January 20, 2014

FILED
 JAN 21 2014
 COUNTY CLERK'S OFFICE
 NEW YORK
 ENTER: 

 J.S.C.