

Morant v City of New York

2015 NY Slip Op 30850(U)

April 3, 2015

Supreme Court, Bronx County

Docket Number: 350203/11

Judge: Elizabeth A. Taylor

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 2

JAQUAN MORANT, an infant by his parent and natural guardian, KIMBERLY MORANT and KIMBERLY MORANT, individually,

Plaintiffs,

-against-

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION ,

Defendants,

The following papers numbered 1 to ___ read on this motion, _____

Index No. 350203/11

DECISION/ORDER

Present:
HON. ELIZABETH A. TAYLOR

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Upon the foregoing papers, this motion has been referred to me for disposition by the Supreme Court Justice at IA part 3, pursuant to the published rules of IA part 3 and the Administrative Judge.

Defendants moved for summary judgment dismissing the plaintiffs action in its entirety. Plaintiffs opposed the Defendants' application. The parties presented the following uncontested facts. On December 9, 2010, the infant plaintiff, Jaquan Morant, was a student attending Alfred E. Smith High School. Upon arriving to school that morning and after proceeding through the metal detector, plaintiff was instructed to step aside and wait to be escorted to the detention room because he was not dressed in the proper attire required by the school. Shortly thereafter, plaintiff, along with three other students, were escorted to the detention room located in the basement by Dean Perdomo. Upon arriving at the detention room, Dean Perdomo instructed the students

to wait until he came back because the room was locked. Dean Perdomo left the students unattended and went back upstairs.

While the students waited, five other students came down the stairs and walked passed the plaintiff and the other three students. The five students turned around and approached the plaintiff and the other three students stating "what's up . . ." An altercation between the students occurred after the five students began swinging and punching the plaintiff and the other three students. Student X a/k/a Corey, initially missed plaintiff with a punch and subsequently connected with several punches, and at least one caused an injury to his left eye. After the incident, plaintiff was taken to the dean's office holding his left eye. Plaintiff was not able to recall some of the events of what happen after arriving in the dean's office. Plaintiff was taken to the hospital by ambulance for the injuries he suffered as a result of the altercation. The parties dispute on this record whether the defendants' failure to supervise was the proximate cause of the plaintiff's injuries.

On a motion for summary judgment, the moving party bears the burden of making a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence, in admissible form, to eliminate any material issues of fact from the case (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Matter of Redemption Church of Christ v Williams*, 84 AD2d 648, 649 [3d Dept 1981]). To successfully defeat such a motion for summary judgment, the non-moving party must show facts sufficient to require a trial of any issue

of fact (*Zuckerman v City of New York*, 49 NY2d 492 [1980]). Normally, the non-moving party must also make a showing by producing evidentiary proof in admissible form. However, the rule is more flexible for the opposing party who may be permitted to demonstrate acceptable excuse for failure to meet the strict requirement of tender in admissible form; however mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord & Swift v Stewart M. Muller Constr. Co.*, 46 NY2d 276 [1978]). Hence, in considering whether to grant a summary judgment motion, a "drastic remedy" in this State, the court looks to find issues rather than to determine them, and to evaluate whether the alleged factual issues are genuine or lack substance (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 394, 404-05 [1957]).

In the instant matter, the court initially finds that the defendants have established a *prima facie* showing that they are entitled to a judgment as a matter of law. It is well settled that schools are under a duty to adequately supervise the students in their charge and will be held liable for foreseeable injuries proximately cause by the lack of adequate supervision (*Mirand v City of New York*, 84 NY 2d 44 [1994]). However, case law has made it very clear that schools are not insurers of safety, and cannot be expected to continuously supervise, monitor and control all movements and activities of the students within their care (*Santos v New York City Dept. Of Educ.*, 42 AD 3d 422 [2d Dept 2007]). Moreover, when a student's injuries are caused by the intentional acts of another student, the school is liable under a negligent supervision theory only where the plaintiff shows that the acts of the fellow student could have been reasonably anticipated due to the school's notice or prior specific knowledge of the aggressor student's propensity to engage in such conduct (*Mirand*, 84 NY 2d 44).

Defendants, on this record, assert that the lack of supervision alleged by the plaintiffs was not the proximate cause of the plaintiffs' injuries. They argue that more supervision could not have prevented the spontaneous nature of the altercation between the plaintiff and the other students. Defendants insist that they did not have actual or constructive knowledge on any conflict between the plaintiff and Corey, and therefore, it was not foreseeable that the lack of supervision would result in the injuries sustained as a result of this particular incident.

Defendants presented the plaintiff's sworn testimony to establish that they did not have any actual or constructive notice of a conflict with Corey. They noted that plaintiff testified that he had no relationship with Corey and only knew him from his gym class. They also noted that the plaintiff testified that he never had any arguments with Corey, never spoke to each other in the hallway, and did not have a relationship with him outside of the school. Defendants also presented the sworn testimony of Dean Melvin Goitia, who testified that Corey did not have a reputation at the school for any violent propensity. They noted that Corey was never involved any physical altercations with other students prior to this incident. They suggest that the December 9, 2010 incident happened so quick that supervision could not have prevented the altercation.

Defendants made a further *prima facie* showing that they are entitled to a judgment as a matter of law on the plaintiff's mother's derivative claim because they were not the proximate cause of the mother's lost. They insist that the derivative claim is based upon the primary claim. In addition, defendants made a *prima facie* showing that the City of New York and the New York City Department of Education are separate entities and that the claim against the City of New York must be dismissed. Based

upon the foregoing, the burden now shifts to the plaintiffs to show facts and evidence, in admissible form, sufficient to require a trial of any issue of fact (*Zuckerman*, 49 NY2d 492).

Plaintiffs assert that the defendants' failure to properly supervise the students is the proximate cause of their injuries. They insist that the defendants breached their duty to provide adequate supervision because they had specific or constructive notice of the dangerous conduct that caused the plaintiff's injuries. They suggest that Dean Goitia's sworn testimony confirms that the defendants had notice of a possible conflict between the plaintiff and Corey. They note that Dean Goitia acknowledged that he heard rumors of a prior incident between the plaintiff and Corey. Plaintiffs also note that Dean Goitia acknowledged that he was aware of the rumors of gangs in the school, and that Corey was involved in a prior incident which resulted in a principal's suspension.

Plaintiffs also argue that the defendants had a duty to provide adequate supervision to protect the student body based upon the history of violence at the school. They presented undisputed documentation that, prior to the subject altercation, there were at least 70 complaints during the 2010 school year. They suggest that there are extra safety agents assigned to patrol the school because of the safety concerns. They noted that there are eight school safety agents assigned to the school along with a New York City Police Officer from the 40th Precinct on call, for the purpose of patrolling the school to prevent fights. Plaintiff indicated that he was trying to get a safety transfer since October 2010 because of problems with "some kids from Cortlandt." Plaintiffs note that Dean Goitia confirmed that there were problems with the

kids from the projects coming to the school and harassing the students.

Plaintiffs also assert that Dean Goitia acknowledged in his deposition that he was aware of rumors of prior incidents between the Plaintiff and Corey. They note that the defendants had specific knowledge or notice of the dangerous conduct that caused the injuries in this case. They assert that assault on the plaintiff by a fellow student should have been reasonably anticipated by the defendants in light of the history of incidents, fights, and gang violence that occurred in and around the school. Plaintiffs insist that the defendants were aware of the need to protect their students but, allege that they failed to provide adequate supervision.

Plaintiffs further argue that a reasonably prudent parent, armed with knowledge that there was an overwhelming security issue, would have ensured that there was proper supervision before leaving students in a basement hallway adjacent to a detention room where problem students are sent. They assert that the defendants should have realized that there was an increased chance of a fight under these circumstances and suggest that no parent would leave their child in such a precarious situation. Plaintiffs insist that the defendants' breach of the duty to provide adequate supervision was the proximate cause of the plaintiff's injuries as the chain of the assault was foreseeable. They suggest that it was unreasonable to leave the plaintiff and the other students unattended in the basement hallway, where no regular school activities take place, and far removed from the main entrance.

Based upon the facts and circumstances presented on this record, this court finds that the plaintiffs have provided sufficient allegations and evidence, in admissible form, to require a trial on the disputed facts regarding the foreseeability of the injuries

suffered by the plaintiff (*Zuckerman*, 49 NY2d 492). Dean Goitia acknowledged that there were “rumors flying around the school” that there may have been a prior incident between the plaintiff and the student that assaulted him.

The role of the court on this application is only to identify and evaluate whether the defendants had specific knowledge or constructive notice of the possible dispute between the plaintiff and Corey to warrant a trial on the disputed facts, and not determine them (*Sillman*, 3 NY2d 394, 404-05). This question of fact must be determined by a reasonable finder of fact who may or may not determine that the defendants’ failure to provide adequate supervision was the proximate cause of the plaintiff’s injuries (*see for example Mirand*, 84 NY 2d 44). A reasonable person could conclude that it was foreseeable, based upon the possible rumored history between the plaintiff and Corey, that leaving the students assigned to detention unattended in the basement next to the detention room could result in the injuries suffered by the Plaintiff.

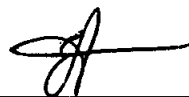
The court also finds that the plaintiffs successfully rebutted defendants’ *prima facie* showing of entitlement to a judgment as a matter of law on the plaintiff’s mother derivative claim. The derivative claim is dependent on the success of the plaintiff’s claim for personal injuries that must be determined at trial. The court further finds that plaintiffs successfully rebutted the defendants’ *prima facie* showing that this matter against the City of New York should be dismissed. Plaintiffs correctly argue that as the City of New York provides or hires security for the school, it may be responsible for failing to adequately protect plaintiffs (*see for example Speight v City of New York*, 309 AD2d 501 [1st Dept 2003]).

In light of the foregoing, it is hereby,

ORDERED that defendants application for summary judgment and dismissal of this action is hereby denied in its entirety.

The foregoing shall constitute the decision and order of this court.

Dated: APR 03 2015



A.J.S.C.

Elizabeth A. Taylor