Williams v City of New York
2020 NY Slip Op 32065(U)
June 24, 2020
Supreme Court, New York County
Docket Number: 150049/2016
Judge: Laurence L. Love

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L LOVE** **PART** **62**

Justice

----------X

VALERIE WILLIAMS, VALERIE WILLIAMS AS PARENT AND NATURAL GUARDIAN OF A. H., AN INFANT UNDER THE AGE OF FOURTEEN,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, HAPPY CHILD TRANSPORTATION, LLC., JILLIAN VEGA, MS. LARENA, JOHN DOE AND JANE DOE # 1 -10, PARENTS OF JOHN DOE AND JANE DOE # 1 - 10

Defendants.

----------X

INDEX NO. 150049/2016

MOTION DATE 05/11/2020, 05/19/2020

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 50, 57, 59

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 58

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents,

The following read on motion sequence no. 1. Defendants CITY OF NEW YORK ("City"), NEW YORK CITY DEPARTMENT OF EDUCATION ("DOE"), and Ms. ANABELLE LARENA, make a motion for dismissal, CPLR 3211, or in the alternative, a motion for summary judgment, CPLR 3212.

The following read on motion sequence no. 2. Defendants HAPPY CHILD TRANSPORTATION LLC and JILLIAN VEGA seek summary judgment, CPLR 3212.

This litigation relates to an incident on May 12, 2014, at 3:30 pm, when infant-plaintiff was physically battered by three students on a school bus. Infant-plaintiff is an autistic non-verbal student who sustained numerous cuts to her face and chest, along with several braids of her hair being ripped out. Plaintiffs' cause of action includes 1) negligence, due to defendants' breach of duty to take reasonable care to protect students, and 2) that plaintiff Valerie Williams has been deprived of the society and affection of her infant-daughter.

CPLR § 3212(b) states, the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party. The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (see *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

To establish a negligence cause of action, a plaintiff must demonstrate 1) a duty of care owed to the plaintiff; 2) a breach of that duty; 3) that the breach is a proximate cause of plaintiff's injury or damages; and 4) that the plaintiff suffered a legally cognizable injury or damages (see *Akins v Glens Falls City School District*, 44 NYS2d 644 [1981]).

Defendants City, DOE, and Larena state "the incident that resulted in [i]nfant-[p]laintiff's injury occurred outside Defendants' orbit of authority … DOE has neither the duty nor ability to prevent attacks that happen once students leave the orbit of its authority" (Def Aff Supp No 10).

Defendants claim that the DOE has a duty to provide adequate supervision and to use reasonable care for the safety of pupils under its control (see *Pratt v Robinson*, 39 NY2d 554,

560 [1976]). A school is not an insurer of its students' safety. A school's duty of supervision to a student is coextensive with, and concomitant with, its physical custody and control over the student (*Id* at 544). When that custody ceases because the child has passed out of the orbit of the school's authority in such a way that the parent is perfectly free to reassume control over the child's protection, the school's custodial duty also ceases (*Id* at 544).

Defendants City, DOE, and Larena contend the "bus was owned and operated by Happy Child Transportation, LLC and was under the supervision of a bus matron and bus driver who were employed, at the time of incident, by Happy Child Transportation, LLC. As such, [d]efendants [City, DOE, Larena] cannot be held liable for [i]nfant [p]laintiff's injuries because its duty of supervision to her ceased once the infant left [d]efendant's orbit of authority" (Def Aff Supp No 12).

Defendants cite *Stephenson v City of New York*, 19 NY3d 1031 (2012), in which a student plaintiff was injured in an assault by another student that occurred two blocks from the boy's school prior to school hours. The altercation which resulted in plaintiff's injuries was out of the orbit of the school's authority. The case at bar can be differentiated from *Stephenson* where here, the student is on a school bus, and the parent cannot "reassume control over the child's protection."

Defendants also cite *Banks v New York City Dept of Educ*, 895 NYS2d 512 (2d Dept). In *Banks*, the infant plaintiff, an eighth-grade student was a passenger on an MTA New York City Transit Authority Bus contracted out to provide bus services. The infant plaintiff was injured when other students on the bus threw lit firecrackers that landed on his clothing. The second department granted defendant Department of Education's motion for summary judgment, "the

DOE demonstrated, prima facie, that it's duty to adequately supervise the students ended once the students were safely aboard the Transit Authority Bus."

However, here infant-plaintiff is a special needs student and the bus company has a direct contract with the Department of Education providing transportation services for special needs students and they provide a matron as well as bus driver. Testimony indicated that these individuals took at least some instruction from school officials as to potential issues and concerns related to the transport of specific children in their care. The affidavit of John Marzo, an officer and member of Happy Child Transportation LLC states, "Happy Child is a school bus operating company which had previously provided busing service to the New York City Department of Education; in 2014, Happy Child's sole transportation contract was with the DOE; that DOE contract was for the transportation of students with special needs" (see Marzo affidavit no. 3-5).

There remain questions of fact as to when a parent resume control of their special needs children being transported from the public school to her home.

Defendants Happy Child Transportation LLC and Jillian Vega move for summary judgment contending the incident was spontaneous and incapable of being prevented under a reasonable level of suspicion.

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 *Ohman v Board of Educ of City of NY*, 300 NY 306, 310 [1949]).

Defendants Happy Child Transportation LLC and Vega contend, "[p]rior to May 12, 2014, Jillian Vega had not received any written or verbal notice from the school or the DOE that

[i]nfant [p]laintiff was the subject of any bullying from any other children on the bus" (Aff in Supp at 31).

Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). On summary judgment, "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr Corp*, 18 NY3d 499, 503 [2012]).

Plaintiffs' opposition highlights *Pratt*, [i]n placing the child on the bus and in light of their actual knowledge of prior complaints and refusing to make any special accommodations of the infant-plaintiff to ensure her protection – the DOE took the place of the infant-plaintiff's parent and should therefore be held responsible for abuse that they knew about and did nothing to prevent (see *Pratt v Robinson*, 39 NY2d 544 [1976]).

The deposition testimony of DOE special ed teacher Annabelle Larena states "if there are any concerns or things that might have happened before boarding the kids to the bus, they [DOE staff] would inform the bus driver or the bus matron" (Larena deposition pg. 23 ln. 9).

The affidavit of plaintiff Valerie Williams affirms that "three months prior to May 12, 2014 [the incident], I contacted the New York City Office of Pupil Transportation, specifically Mr. Daryl Johnson, to change my daughter from the large bus she was on to a smaller bus due to complaints about my daughter being abused and my request was flatly refused. I continued to make complaints during the months of February, March and April about the treatment of my daughter to the Defendants and no actions were taken to ensure her safety" (Plaintiff Affidavit at 8). "I also made complaints about the treatment of my daughter on the bus to the school principal, Principal Schutzer, the vice-principal, Cruz and the unit coordinator, Jacquelyn Albert.

Again, each of my complaints went ignored and my daughter's bus was not changed nor were any additional paraprofessionals assigned to the bus" (Plaintiff Affidavit at 9). "Additionally, I had complained to the supervisor at the bus company, Happy Child Bus Transportation, complaining about the treatment of my daughter on the bus prior to May 12, 2014" (Plaintiff Affidavit at 10). "I also had complained to both the bus driver and the bus matron regarding abusive treatment of my daughter on the bus in question prior to May 12, 2014, again to no avail" (Plaintiff Affidavit at 11).

Due to the alleged advanced knowledge of complaints of abuse and their admitted responsibility to notify the bus company of concerns which they did not do, the DOE has a duty to provide adequate supervision and to use reasonable safety for the care of its pupils (see *Hoose v Drumm*, 281 NY [1939]).

To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]. Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable (see *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]).

Additionally, the bus driver, Tiffany Williams prepared an incident report where she observed the children "bothering" the infant-plaintiff before the incident. The incident report completed by the driver, dated May 12, 2014, states "I, Tiffany William, Driver, was watching _____ the entire time in my mirrors. He kept sneaking out of his seat when he assumed I was not paying attention." Only after the infant-plaintiff was assaulted did the bus driver move their seats. Missing from defendant's motion papers is an affidavit from bus driver, Tiffany

Williams. There remains a question of fact whether the bus driver was on notice of a bullying issue, whether verbal or physical.

The incident report of the matron, Jillian Vega, has a check mark next to "disrupted other students." The matron does not checkmark the available "physically abusive" option in the incident report. The description of the incident states, "I warned the students to leave …." There remains a question of fact on whether the bus driver and matron received enough notice of a possible attack on the plaintiff in this situation. The incident report of the bus driver and matron does not proceed in enough detail to determine how much notice was given nor what were the preventative measures taken by them. The combination of their completed incident reports along with their deposition testimony raises an issue as to when they first became aware of a potential issue of infant plaintiff being injured and what if any steps could have been taken sooner during the subject bus ride to avoid further injury.

Finally, whether the steps taken by a school to protect a student from foreseeable harm is adequate is generally a question of fact for a jury (see *Conklin v Saugerties Cent Sch Dist*, 106 AD3d 1424, 1426 [3d Dept 2013]).

ORDERED that summary judgment motion no. 1 of The City of New York, Department of Education, and Ms. Anabella Larena is DENIED based on the above discussion by the court.

ORDERED that summary judgment motion no. 2 of Happy Child Transportation LLC, and Jillian Vega is DENIED.

6/24/2020
DATE

Hon. Laurence L Love, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**