

Daughtry v Northwell Health, Inc.
2023 NY Slip Op 35296(U)
August 3, 2023
Supreme Court, Queens County
Docket Number: Index No. 717959/2017
Judge: Tracy Catapano-Fox
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KEVIN C. DAUGHTRY,

Index No. 717959/2017

Plaintiff,

Part 6

Motion Date: July 24, 2023

-against-

Calendar No. 7

Sequence No. 6

NORTHWELL HEALTH, INC., ZUCKER HILLSIDE
HOSPITAL, NEW YORK CITY DEPARTMENT OF
EDUCATION, NEW YORK CITY BOARD OF
EDUCATION, and THE CITY OF NEW YORK,

Defendants.

-----X

The following papers numbered EF110 to EF138 read on this motion by defendants NEW YORK CITY DEPARTMENT OF EDUCATION, NEW YORK CITY BOARD OF EDUCATION, and THE CITY OF NEW YORK for summary judgment and dismissal of plaintiff's Complaint and all cross-claims against them pursuant to CPLR §3212.

Papers

Numbered

Notice of Motion, Affirmation, Exhibits.....	EF110-EF117
Affirmation in Opposition, Exhibits.....	EF122-EF129
Affirmation in Opposition, Exhibits.....	EF135-EF136
Reply Affirmation.....	EF137-EF138

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants New York City Department of Education, New York City Board of Education, and the City of New York's motion for summary judgment and dismissal of plaintiff's Complaint and all cross-claims against them pursuant to CPLR §3212 is granted, they established a prima facie entitlement to summary judgment.

Plaintiff commenced this action for personal injuries sustained on October 24, 2017 while he was teaching at Zucker Hillside Hospital (hereinafter referred to as "Zucker") as part of a program run by the City. Plaintiff filed the Summons and Complaint on December 28, 2017, and

issue was joined via service of defendant Zucker's Verified Answer on January 12, 2018. Plaintiff subsequently commenced a related action against defendant City via the filing of a Summons and Complaint on August 27, 2018. Issue was joined and the matters were subsequently consolidated into the instant action by Court Order dated January 11, 2019.

Moving defendants argue that plaintiff's Complaint should be dismissed against The City of New York because it is a separate legal entity from the Board of Education/Department of Education (hereinafter collectively referred to as "DOE"), and that plaintiff's Complaint should be dismissed against DOE because they owed no special relationship or duty to plaintiff. With respect to DOE, defendants argue that plaintiff's Complaint should be dismissed because it does not sufficiently plead a special relationship or duty, nor does plaintiff's Notice of Claim. They further argue that even if plaintiff could overcome the deficient pleadings, DOE is entitled to summary judgment because in DOE cases involving student-on-teacher assaults, courts have repeatedly found no liability on the part of DOE where there is no evidence of a special duty. Defendants further argue that DOE did not voluntarily assume any duty to act on behalf of plaintiff, did not possess knowledge that its actions or inactions would lead to harm, and did not induce plaintiff's justifiable reliance. They further argue that plaintiff cannot prove negligent staffing, because that is a matter of educational policy which lies within the school's professional judgment and discretion, and DOE is therefore entitled to the governmental function immunity defense. Finally, defendants argue that the proximate cause of plaintiff's injuries was the spontaneous acts of the student and not the alleged negligent staffing, as greater security or more teachers in the classroom would not have prevented this accident. Based upon the foregoing, defendants argue that they are entitled to summary judgment.

Plaintiff opposes defendants' motion and argues that they failed to eliminate all triable issues of fact in dispute, that a special duty existed between plaintiff and City defendants, and that the assault was not a spontaneous act. Plaintiff argues that defendants violated Labor Law §27 and §27-a, statutes designed to protect employees like plaintiff. He further argues that there is a special duty because defendants voluntarily assumed the duty of protecting employees from similar situations by instituting protocols designed to address the known behavioral tendencies of the student patients in the One West Unit. Plaintiff argues City defendants assumed control in the face of a known, blatant, and dangerous safety condition by instituting those protocols, including the necessity for one teacher and one paraprofessional in the classroom, and defendants' failure to properly staff the classroom caused plaintiff's injuries. Plaintiff argues that the student assault was reasonably foreseeable, and a degree of security could have prevented it, such as a working buzzer system. Based upon the foregoing, plaintiff argues that defendants City are not entitled to summary judgment.

Co-defendant Zucker Hillside Hospital (hereinafter referred to as "Zucker") partially opposes defendants' motion to the extent that if the Court finds that there is a question of fact with

respect to foreseeability, co-defendant Zucker asserts that City defendants are not entitled to summary judgment because they owed a special duty to plaintiff. Co-defendant Zucker further argues that the City established policies and rules to create a safe classroom and plaintiff relied on the City follow those policies and rules. Co-defendant Zucker further argues defendants failed to properly staff the classroom in violation of their policies, and therefore proximately caused plaintiff's injuries. Finally, co-defendant Zucker argues that the Complaint should not be dismissed against the City of New York because "it is well known" that New York City provides security to all City public schools.

Pursuant to CPLR §3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause of action." (*Id.*). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012].) Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

While there is generally no duty to control the conduct of a third person to prevent them from causing injury to others, there are special circumstances in which there is sufficient authority and ability to control the conduct of third persons warranting a duty to do so. (*Citera v. County of Suffolk*, 95 A.D.3d 1255, 1258-1259 [2d Dept. 2012].) The Court of Appeals has recognized "a duty to control the conduct of others where there is a special relationship: a relationship between defendant and a third person whose actions expose plaintiff to harm such as would require the defendant to attempt to control the third person's conduct; or a relationship between the defendant and plaintiff requiring defendant to protect the plaintiff from the conduct of others." (*Purdy v. Public Adm'r of County of Westchester*, 72 N.Y.2d 1, 8 [1988].)

The special duty owed to students does not generally extend to teachers, administrators, and other adults on or off school premises. (*Ferguson v. City of New York*, 118 A.D.3d 849, 850 [2d Dept. 2014].) With respect to teachers, "a special relationship with a municipal defendant can be formed in three ways: (1) when the municipality violates a statutory duty enacted for the benefit of a particular class of persons, (2) when it voluntarily assumes a duty that generates justifiable reliance by the person who benefits from the duty; or (3) when the municipality assumes positive direction and control in the face of a known, blatant and dangerous safety violation." (*Brumer v.*

City of New York, 132 A.D.3d 795, 796 [2d Dept. 2015]; *see also Moreno v. City of New York*, 27 A.D.3d 536 [2d Dept. 2006][holding that where a teacher was assaulted by a student while on lunchtime duty defendants establish their prima facie entitlement to summary judgment by demonstrating that a special relationship did not exist because their agents did not affirmatively assume a duty to act on plaintiff's behalf and were not aware that inaction could lead to harm].)

Defendants' motion for summary judgment and dismissal of plaintiff's Complaint and all cross-claims against them is granted, as they established a prima facie entitlement to summary judgment. Defendants demonstrated that plaintiff's Complaint should be dismissed against defendant The City of New York, as it is a separate and distinct legal entity from the Department/Board of Education. (*Perez v. City of New York*, 41 A.D.3d 378 [1st Dept. 2007].) Co-defendant Zucker's argument that the Complaint should not be dismissed against the City of New York because "it is well known" that New York City provides security to City public schools is without merit, as it is vague, conclusory, and unsubstantiated by competent, admissible evidence. As there is no evidence that defendant City of New York maintained or controlled the educational site where plaintiff was injured, there are no issues of fact in dispute.

Defendants also established a prima facie entitlement to judgment as a matter of law with respect to defendants New York City Department of Education and New York City Board of Education. They demonstrated that DOE owed no special duty or relationship to plaintiff, as there was no statutory duty owed to plaintiff, nor did DOE voluntarily assume a duty or control in the face of a dangerous situation. (*See Brumer, supra.*) The Second Department has repeatedly held that the general duty that a City municipality owes to its students does not extend to teachers. (*See Thomas v. New York City Dept. of Educ.*, 124 A.D.3d 762, 763 [2d Dept. 2015][holding that the Department of Education owed no special duty to a teacher that was assaulted by a student].) Accordingly, defendants demonstrated a prima facie entitlement to summary judgment.

Plaintiff and co-defendant Zucker failed to demonstrate material issues of fact in dispute. Plaintiff's argument that the DOE voluntarily assumed a special duty by instituting protocols and policies to maintain teachers' safety is without merit. Any policies in place, including having one teacher and one paraprofessional in the classroom, do not create a special duty towards plaintiff individually upon which he could justifiably rely. Additionally, the practices of maintaining the buzzer system and having a mental health worker in the classroom were practices controlled by co-defendant Zucker, over which DOE had no control or influence. Furthermore, the evidence demonstrated this was a spontaneous, instantaneous act by a student, and having the buzzer system or a mental health worker could not have prevented it. Plaintiff's argument that the incident was caused by DOE's negligent staffing is also without merit as it not supported by competent, admissible evidence. Rather, this incident occurred after dismissal of class when only two students remained, one being the aggressor. Therefore, there is no evidence to suggest that a paraprofessional in the courtroom should have or would have prevented the incident. Based upon

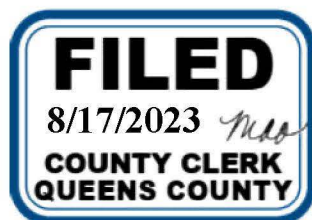
the foregoing, DOE established a prima facie entitlement to summary judgment.

Plaintiff's reliance on *Pascucci v. Board of Educ.*, 305 A.D.2d 103 (1st Dept. 2003), is misplaced, as the plaintiff in *Pascucci* requested for assistance through the school secretary, and the First Department found that this could be considered an implicit promise to act on plaintiff's behalf. The Court further found that once the school secretary received the request, a reasonable jury could find that she created an affirmative duty to assist the plaintiff, not just a general duty with regard to security. (*Id.* at 105.) This is significantly distinguishable from the present case, where plaintiff did not specifically seek assistance from any City employees which was not given to him by defendants.

Accordingly, defendants New York City Department of Education, New York City Board of Education and The City of New York's motion for summary judgment and dismissal of plaintiff's Complaint and all cross-claims against them pursuant to CPLR §3212 is granted. Plaintiff's Complaint is dismissed solely as to defendants The City of New York, the New York City Department of Education, and New York City Board of Education, and all cross-claims against them are also dismissed.

This constitutes the decision and Order of the Court.

Dated: August 3, 2023



Tracy Catapano-Fox

Hon. Tracy Catapano-Fox, J.S.C.