

J.N. v Guiliano

2024 NY Slip Op 34856(U)

July 15, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 608167/2021

Judge: Christopher Modelewski

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SHORT FORM ORDER

INDEX No. 608167/2021
CAL. No. 202301247OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

MOTION DATE 01/22/2024 (002 & 003)
MOTION DATE 03/04/2024 (004)
ADJ. DATE 04/22/2024 (002-004)
Mot. Seq. # 002-MD
Mot. Seq. # 003-MG
Mot. Seq. # 004-MD

-----X
J.N., an infant under the age of 15 years by his
parent and natural guardian, JENNIFER REAY
and JENNIFER REAY, individually,

Plaintiffs,

- against -

PAMELA L. GIULIANO and THE KINGS
PARK CENTRAL SCHOOL DISTRICT,

Defendants.
-----X

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Upon the following papers read on this e-filed motion for summary judgment : Notice of Motion and supporting papers by defendant Pamela L. Giuliano, filed December 7, 2023; Notice of Motion and supporting papers by defendant Kings Park Central School District, filed December 15, 2023; Notice of Cross-Motion and supporting papers by plaintiffs, filed February 26, 2024; Answering Affidavits and supporting papers by plaintiffs, filed February 26, 2024; Answering Affidavits and supporting papers by defendant Pamela L. Giuliano s/h/a Pamela L. Guiliano, filed March 28, 2024; Replying Affidavits and supporting papers by defendant Pamela L. Giuliano s/h/a Pamela L. Guiliano, filed April 4, 2024; Replying Affidavits and supporting papers by defendant Kings Park Central School District, filed April 17, 2024; Replying Affidavits and supporting papers by plaintiffs, filed April 18, 2024; it is

ORDERED that these motions are consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendant Pamela L. Giuliano for summary judgment dismissing the complaint and all cross-claims against her is denied; and it is further

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ORDERED that the motion by defendant Kings Park Central School District dismissing the complaint against it is granted; and it is further

ORDERED that plaintiffs' cross-motion for partial summary judgment in their favor on the issue of defendant Pamela L. Giuliano's negligence is denied.

Plaintiff Jennifer Reay, suing individually and on behalf of her son, infant plaintiff J.N., commenced this action to recover damages for injuries allegedly sustained by J.N. as a result of a motor vehicle accident, which occurred on February 26, 2020, on Lawrence Road, at or near its intersection with East Main Street, in Kings Park, New York. The accident allegedly occurred when J.N., who was walking home after a school-sponsored science fair at Kings Park High School, was hit by a vehicle operated by defendant Pamela Giuliano i/s/h/a Pamela Guiliano ("Giuliano"). Plaintiffs assert causes of action against Giuliano and Kings Park Central School District ("the School District"). Jennifer Reay asserts a derivative claim.

Giuliano now moves for summary judgment dismissing the complaint and cross-claims against her, arguing that she did not cause or contribute to the accident, and that she was traveling with the right-of-way when J.N. crossed the street outside of the crosswalk. In support of her motion, Giuliano submits, among other things, the pleadings and the parties' deposition testimony. Plaintiffs oppose Giuliano's motion and cross-move for summary judgment against Giuliano on the issue of negligence.

The School District also moves for summary judgment dismissing the complaint against it, arguing that the alleged accident occurred off of school property and beyond the orbit of its authority. In support of its motion, the School District submits, among other things, the pleadings and the parties' deposition transcripts. Plaintiffs oppose the motion, arguing that the School District failed to provide a crossing guard, and that there was ongoing construction in the area where J.N.'s accident allegedly occurred. Giuliano also opposes the motion, arguing that there are triable issues of fact as to whether the School District had appropriate procedures in place to ensure its students' safe departure from the high school.

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 48 NYS2d 316 [1985]). If such a showing is made, the burden shifts to the party opposing the motion for summary judgment, who must proffer evidence in admissible form sufficient to establish the existence of any material issue of fact which requires a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163

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AD3d 1033, 1033-1034, 83 NYS3d 74, 75 [2d Dept 2018]). On the other hand, as there can be more than one proximate cause of an accident, a defendant driver who is seeking summary judgment must make a prima facie showing that he or she is free from comparative fault (*see Laureano v EAN Holdings, LLC*, 225 AD3d 754, 207 NYS3d 153 [2d Dept 2024]; *Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696 [2d Dept 2020]; *Inesta v Florio*, 159 AD3d 682, 71 NYS3d 161 [2d Dept 2018]). A defendant driver seeking summary judgment on the issue of liability must establish that he or she kept the proper lookout, or that his or her alleged negligence did not contribute to the accident (*see Ballentine v Perrone*, 179 AD3d 993, 994, 114 NYS3d 696, 697-698). It is generally for the fact-finder to determine the issue of proximate cause (*see Hain v Jamison*, 28 NY3d 524, 46 NYS3d 502 [2016]; *Floricio v City of New York*, 212 AD3d 434, 183 NYS3d 7 [1st Dept 2023]). Additionally, summary judgment is not warranted where the parties submit conflicting deposition testimony that fails to eliminate triable issues of fact as to how the accident occurred (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326 [2d Dept 2023]; *Golovnya v Artemchenko*, 210 AD3d 1058, 180 NYS3d 177 [2d Dept 2022]; *Baab v HP, Inc.*, 211 AD3d 783, 181 NYS3d 124 [2d Dept 2022]). Vehicle and Traffic Law § 1146 imposes a superseding duty on drivers to “exercise due care to avoid colliding with any ... pedestrian ... upon any roadway” (*Hockaday v Hessel*, 223 AD3d 465, 465, 203 NYS3d 49, 50 [1st Dept 2024]).

Here, viewing the evidence in the light most favorable to plaintiffs, Giuliano failed to establish her prima facie entitlement to summary judgment (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326; *Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696). Giuliano testified that shortly before the accident, she was stopped at a red traffic light on Lawrence Road and noticed J.N. waiting to cross over Main Street. She testified that he waited until he had a walk sign and then proceeded across Main Street, and that, shortly thereafter, the light in her favor turned green and she began continuing straight down Lawrence Road. She further testified that her view of plaintiff was obstructed by vehicles on Main Street and vehicles, including a mail truck, traveling southbound on Lawrence Road and waiting to make a left-hand turn. Giuliano testified that she did not observe plaintiff come into contact with her vehicle, stating, “I felt like I hit a bump or I thought I ran something over.” She testified that she pulled over, got out of her vehicle, observed a dent on her drivers’ side door and saw that her side view mirror was broken, and then observed J.N. lying in the road.

Giuliano also submitted J.N.’s deposition testimony, wherein he testified that he after he left school, he stopped at the corner of Lawrence Road and Main Street and waited for the sign to indicate that he could cross. He testified that after crossing Main Street, he checked traffic across Lawrence Road, looking left, then right, and then left again. He testified that a vehicle was stopped over the crosswalk on Lawrence Road for a red light, so he walked behind the vehicle. He testified that he again looked to his left and right, and did not see any vehicles approaching. J.N. further testified that he first became aware he had been in an accident when he noticed he was on the ground, that he never felt contact with the vehicle, and that he was unsure what portion of the vehicle his body contacted. The parties submitted conflicting testimony, and neither could explain how the accident occurred (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326). Giuliano failed to eliminate all triable issues of fact as to whether she kept the proper lookout when traveling through the intersection, and whether J.N.’s negligence was the sole proximate cause of the accident (*see Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696; *Inesta v Florio*, 159 AD3d 682, 71 NYS3d 161).

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Similarly, viewing the evidence in the light most favorable to Giuliano, plaintiffs failed to establish their prima facie case of entitlement to summary judgment (*see Corredor v Alnamer*, ___AD3d___, 2024 NY Slip Op. 03164 [2d Dept 2024]). Giuliano and J.N. submitted conflicting deposition testimony regarding how the accident occurred and failed to eliminate all triable issues of fact as to whether Giuliano was negligent (*see Corredor v Alnamer*, ___AD3d___, 2024 NY Slip Op. 03164; *Garutti v Kim Co. Refrigeration Corp.*, 222 AD3d 728, 201 NYS3d 210 [2d Dept 2023]). Notably, while J.N. testified that he believed traffic on Lawrence Road was stopped for a red light, he also testified at his Municipal Law § 50-h examination that he did not look at the overhead traffic light at any time before attempting to cross over Lawrence Road.

As to the School District's motion, it is well established that a school is not an insurer of the safety of its students (*see Levy v City of New York*, 227 AD3d 975, 2024 NY Slip Op 02807 [2d Dept 2024]). The duty owed by a school to its students stems from its physical custody over its students, and such duty is "coextensive with and concomitant to its physical custody of and control over the child" (*Pratt v Robinson*, 39 NY2d 554, 560, 384 NYS2d 749, 752 [1976]; *Levy v City of New York*, 227 AD3d 975, 2024 NY Slip Op 02807). "When that custody ceases because the child has passed out of the orbit of its authority in such a way that the parent is perfectly free to reassume control over the child's protection, the school's custodial duty ceases" (*Pratt v Robinson*, 39 NY2d at 560, 384 NYS2d at 752-753; *see Hernandez v City of New York*, 147 AD3d 821, 47 NYS3d 362 [2d Dept 2017]). "Generally, a school cannot be held liable for injuries that occur off school property and beyond the orbit of its authority" (*Donofrio v Rockville Ctr. Union Free Sch. Dist.*, 149 AD3d 805, 806, 52 NYS3d 378, 380 [2d Dept 2017]); *Vernali v Harrison Cent. School Dist.*, 51 AD3d 782, 783, 857 NYS2d 699, 701 [2d Dept 2008]). However, a school breaches its duty if the student is released without further supervision into a foreseeably hazardous setting that it had a hand in creating (*see Boyle v Brewster Central Sch. Dist.*, 209 AD3d 619, 175 NYS3d 343 [2d Dept 2022]; *Ade v City of New York*, 164 AD3d 1198, 83 NYS3d 653 [2d Dept 2018]).

Here, the School District has established its prima facie entitlement to summary judgment dismissing the complaint against it by demonstrating that the accident occurred when J.N. was off school property, after being dismissed from the after-school science fair, and beyond the orbit of its authority (*see Ade v City of New York*, 164 AD3d 1198, 83 NYS3d 653; *Donofrio v Rockville Ctr. Union Free Sch. Dist.*, 149 AD3d 805, 806, 52 NYS3d 378). Jeff Harris testified on behalf of the School District that he believed the police department was responsible for scheduling crossing guards, and that crossing guards were not at the school for after-hours events. Jennifer Reay, J.N.'s mother, testified at her deposition that earlier in the school year she had called the school to ask about transportation for after-school activities, and that she was told "that the onus is on the parents to provide the transportation." She further testified that J.N. "became a walker in high school out of necessity," and that on days when he had cross country or track practice, he would either walk home or get a ride with a friend.

In opposition, plaintiffs failed to raise a triable issue of fact. Giuliano testified that construction work was not taking place on the date of the accident. Moreover, J.N. walked home from school on prior occasions, with his mother's knowledge and permission. Plaintiffs and Giuliano failed to raise a triable issue of fact, as J.N. was not released into a foreseeably hazardous setting that the School District

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had a hand in creating (*see Ade v City of New York*, 164 AD3d 1198, 83 NYS3d 653; *Donofrio v Rockville Ctr. Union Free Sch. Dist.*, 149 AD3d 805, 52 NYS3d 378).

Accordingly, plaintiffs' and Giuliano's motions are denied, and the School District's motion is granted.

The foregoing constitutes the decision and Order of the Court.

Dated: July 15, 2024



HON. CHRISTOPHER MODELEWSKI, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION