Grant v City of New York
2015 NY Slip Op 31935(U)
October 16, 2015
Supreme Court, New York County
Docket Number: 158123/12
Judge: James E. d'Auguste
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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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ANDREA GRANT, as Mother and Natural Guardian of D.W., an Infant,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, AND RANDALL'S ISLAND SPORTS FOUNDATION, INC.,

Defendants.

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DECISION AND ORDER
Index No. 158123/12
Mot. Seq. No. 001

Hon. James E. d'Auguste

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1, 2 (Exs. A-G)
AFFIRMATION IN OPPOSITION TO MOTION.....	3 (Exs. A-D)
REPLY AFFIRMATION.....	4

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this action filed by plaintiff, Andrea Grant, for personal injuries allegedly sustained by the infant D.W.,[1] defendants The City of New York (the "City"), The New York City Department of Education (the "DOE"), and Randall's Island Sports Foundation, Inc. ("Randall's Island") (collectively, "defendants") move, pursuant to CPLR 3212, for an order granting summary judgment in their favor and dismissing the complaint, along with such other and further relief as this Court deems proper. For the reasons stated herein, defendants' motion for summary judgment is granted in its entirety.

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[1]The infant's full name is not disclosed pursuant to the Uniform Civil Rules of the Supreme and County Courts § 202.5(e) relating to the omission or redaction of confidential personal information.

Factual and Procedural History

Grant, as Mother and Natural Guardian of D.W., commenced this action for personal injuries allegedly sustained by D.W. on July 27, 2010, during an optional field trip to Icahn Stadium on Randall's Island, New York, when he was injured while running a hurdle race on the stadium track. At the time that D.W. was allegedly injured, he was thirteen years old and he was wearing jeans that did not drag on the floor, a t-shirt, and sneakers that were laced up. D.W. cleared the first and second hurdles, but fell when his left toe hit the third hurdle.

By order dated July 24, 2012 and entered August 1, 2012, this Court (Wright, J.) granted plaintiff's petition to file a late notice of claim. Ex. A.[2] Plaintiff commenced this action by filing a summons and verified complaint on or about November 19, 2012, alleging negligent supervision and negligent operation and control of the premises. Ex. B. Issue was joined by the City and the DOE by service of their answer. Ex. C. On or about February 22, 2013, the City served an amended answer on behalf of Randall's Island. *Id.* On October 1, 2012, D.W. appeared for a hearing held pursuant to New York General Municipal Law § 50-h (Ex. E), and appeared for a subsequent examination before trial on January 7, 2014 (Ex. F). On February 11, 2015, defendants moved for summary judgment to dismiss the complaint, asserting that (1) the City cannot be held liable for negligent supervision because the DOE, not the City, owes a duty to supervise the students in its custody, and the two are separate legal entities; (2) the DOE cannot be held liable because it did not breach its duty to adequately supervise D.W. because his alleged injury was sudden, spontaneous and unforeseeable, and no amount of supervision would have prevented said injury; and (3) there is no viable cause of action against the City or Randall's

[2]Unless otherwise noted, all references are to the exhibits annexed to the affirmation of defendants' attorney submitted in support of their motion.

Island for negligent operation and control of the premises because there is no evidence or testimony that alludes to unsafe premises or equipment.

Discussion

First, this Court notes that the DOE is a separate and legally distinct entity from the City. N.Y. Educ. Law § 2551; *Luis S. ex rel. Susana B. v. City of New York*, 130 A.D.3d 485, 486 (1st Dep't 2015); *Perez v. City of New York*, 41 A.D.3d 378, 379 (1st Dep't 2007). As such, the City is an improper party in this action (*see id.*), and it is the DOE, not the City, that owes a duty to supervise students in its custody. *Begley v. City of New York*, 111 A.D.3d 5, 23 (2d Dep't 2013), citing *Pratt v. Robinson*, 39 N.Y.2d 554, 560 (1976). Accordingly, the City's application for summary judgment is hereby granted.

Second, despite the DOE's duty to adequately supervise students in its custody, the DOE will only be "held liable for foreseeable injuries proximately related to the absence of adequate supervision." *Mirand v. City of New York*, 84 N.Y.2d 44, 49 (1994). Further, "school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students daily." *Id.* at 49. To determine whether there was adequate supervision under the circumstances, courts consider factors such as the age of the student, the nature of the activity, and adult presence. *Calgano v. John F. Kennedy Intermediate Sch.*, 61 A.D.3d 911, 91-12 (2d Dep't 2009). Given D.W.'s age at the time of the incident, the voluntary nature of the activity, and the fact that several teachers were supervising plaintiff at the time of the accident, this Court finds that the DOE was not negligent and provided adequate supervision. *See Luis S. ex rel. Susana B.*, 130 A.D.3d at 485-86; *Berdecia v. City of New York*, 289 A.D.2d 354, 354 (2d Dep't 2001); *Navarra v. Lynbrook Public Schs.*, 289 A.D.2d 211, 211 (2d Dep't 2001).

Plaintiff's mere speculation that injury could have been avoided had certain conditions been different is insufficient to defeat summary judgment. *See Luis S. ex rel. Susana B.*, 130 A.D.3d at 486. Accordingly, the DOE's application for summary judgment is hereby granted.

Third, though not raised in plaintiff's notice of claim, this Court will address plaintiff's claim for negligent operation and control of the premises as alleged against the City and Randall's Island. Plaintiff presented no evidence that the premises or equipment used in the hurdle race were unsafe, and he had successfully jumped over the first two hurdles. D.W. in fact testified that the hurdle did not look broken at the time of the incident. Ex E., at 47:4-6. Additionally D.W. testified that no one else who was participating in the hurdle race fell around the same time. *Id.* at 46:8-10. "Defendants' unrefuted evidence demonstrated that the other students navigated the hurdle without incident, and that there was no known history of injuries occurring in connection with the obstacle course." *Luis S. ex rel. Susana B.*, 130 A.D.3d at 485. Since the City has already been granted summary judgment, and no evidence exists that Randall's Island can be held liable for any premise-related claims, Randall's Island is also granted summary judgment.

Conclusion

For the reasons stated above, defendants' motion for summary judgment is granted and plaintiff's complaint is hereby dismissed without costs. The Clerk shall enter judgment accordingly. This constitutes the decision and order of this Court.

Dated: October 16, 2015

A.J.S.C.

JAMES E. d'AUGUSTE
JSC