

Eggebemwen A. v New York City Dept. of Educ.
2017 NY Slip Op 01655
Decided on March 7, 2017
Appellate Division, First Department
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Decided on March 7, 2017

Acosta, J.P., Richter, Manzanet-Daniels, Gische, Webber, JJ.

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**[*1]Eggebemwen A., an infant by his mother and natural guardian Benedicta A., et al.,
Plaintiffs-Appellants,**

v

New York City Department of Education, et al., Defendants-Respondents.

Harnick & Harnick, P.C., New York (Jackie L. Gross of counsel), for appellants.

Zachary W. Carter, Corporation Counsel, New York (Janet L. Zaleon of counsel), for respondents.

Order, Supreme Court, New York County (Margaret A. Chan, J.), entered June 5, 2015, which granted defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Infant plaintiff, a 15-year-old member of his school's basketball team, was injured when he tripped on a wrestling mat that he alleges was two to four steps from the baseline of an

indoor basketball court, after he tried to dunk the basketball during a lay-up drill. The basketball court was located in a multi-purpose gym, and the wrestling mat, by all accounts, was open and obvious. Plaintiff assumed the risk of injury by voluntarily choosing to participate in the drill, despite his awareness of the presence of the mat, and his knowledge that it posed a potential tripping hazard (*see Wallace v City of New York*, 138 AD3d 509 [1st Dept 2016], *lv denied* 27 NY3d 911 [2016]; *Latimer v City of New York*, 118 AD3d 420 [1st Dept 2014]; *Steward v Town of Clarkstown*, 224 AD2d 405 [2d Dept 1996], *lv denied* 88 NY2d 815 [1996]).

We note that dismissal as to the City was required in any event, because it is not a proper party (*see Perez v City of New York*, 41 AD3d 378 [1st Dept 2007], *lv dismissed* 10 NY3d 708 [2008]).

We have considered plaintiffs' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 7, 2017

CLERK

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