WESTLAW

2018 WL 3748326
Supreme Court, Appellate Division, Second Department, New York.

Brianna BOLAND, etc., respondent-appellant,

Boland v. North Bellmore Union Free School District
Supreme Court, Appellate Division, Second Department, New York. August 8, 2018 --- N.Y.S.3d ---- 2018 WL 3748326 2018 N.Y. Slip Op. 05663 *(Approx. 3 pages)*

NORTH BELLMORE UNION FREE SCHOOL DISTRICT, appellant-respondent.

2016–03717
(Index No. 14505/13)
Argued—February 1, 2018
August 8, 2018

Synopsis

Background: Student brought personal injury action against school district, alleging **negligent** maintenance of school district's **playground** and **negligent** training and supervision regarding student's fall from an apparatus in school district's **playground** during recess. The Supreme Court, Nassau County, Karen V. Murphy, J., denied school district's summary judgment motion on **negligent** maintenance claim, and granted school district's summary judgment motion on **negligent** training and supervision claim. Parties cross-appealed.

Holdings: The Supreme Court, Appellate Division, held that:
1 school district was not liable for **negligent** training and supervision, and
2 school district was not liable for **negligent** maintenance of **playground**.

Affirmed in part and reversed in part.

West Headnotes (2)

Change View

1 **Education**

School district provided adequate training of its staff and **playground** supervision, and the level of training or supervision was not a proximate cause of student's accident involving fall from apparatus in school district's **playground** during recess, and thus school district was not liable for **negligent** training and supervision in student's personal injury action.

2 **Education**

School district adequately maintained **playground** and did not create an unsafe or defective condition on **playground**, and thus school district was not liable for **negligent** maintenance of **playground** in student's personal injury action for injuries sustained in fall from apparatus in school district's **playground** during recess, even though **ground** cover beneath apparatus did not meet American Society of Testing Material standards or standards established by the Consumer Product Safety Commission; standards were guidelines and not mandatory.

Attorneys and Law Firms

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y. (Kathleen D. Foley of counsel), for appellant-respondent.

Mahon, Mahon, Kerins & O'Brien, LLC, Garden City South, N.Y. (Joseph A. Hyland of counsel), for respondent-appellant.

RUTH C. BALKIN, J.P., CHERYL E. CHAMBERS, COLLEEN D. DUFFY, HECTOR D. LASALLE, JJ.

DECISION & ORDER

*1 In an action to recover damages for personal injuries, the defendant appeals and the plaintiff cross-appeals from an order of the Supreme Court, Nassau County (Karen V. Murphy, J.), dated February 26, 2016. The order, insofar as appealed from, denied that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** maintenance of its premises. The order, insofar as cross-appealed from, granted that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** training and supervision.

ORDERED that the order is reversed insofar as appealed from, on the law, and that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** maintenance of its premises is granted; and it is further,

ORDERED that the order is affirmed insofar as cross-appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

On February 8, 2012, the infant plaintiff allegedly was injured when she fell from an apparatus in the defendant's school **playground** during recess. The infant plaintiff, by her mother as guardian, commenced this action against the defendant, alleging **negligent** training and supervision and **negligent** maintenance of the **playground**. After issue was joined, the defendant moved for summary judgment dismissing the complaint. The Supreme Court granted that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** training and supervision and denied that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** maintenance of its premises. The defendant appeals and the plaintiff cross-appeals.

1 The defendant established its prima facie entitlement to judgment as a matter of law dismissing so much of the complaint as alleged **negligent** training and supervision by submitting evidence which demonstrated that it provided adequate training of its staff and **playground** supervision, and that the level of training or supervision was not a proximate cause of the accident (*see Cohen v. Half Hollow Hills Cent. Sch. Dist.*, 123 A.D.3d 1081, 1082, 1 N.Y.S.3d 196; *Davidson v. Sachem Cent. School Dist.*, 300 A.D.2d 276, 751 N.Y.S.2d 300; *Navarra v. Lynbrook Pub. Schools, Lynbrook Union Free School Dist.*, 289 A.D.2d 211, 733 N.Y.S.2d 730; *Lopez v. Freeport Union Free School Dist.*, 288 A.D.2d 355, 734 N.Y.S.2d 97). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, we agree with the Supreme Court's determination granting that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** training and supervision.

2 The defendant also established its prima facie entitlement to judgment as a matter of law dismissing so much of the complaint as alleged **negligent** maintenance of its premises by submitting evidence which demonstrated that it adequately maintained the **playground** and that it did not create an unsafe or defective condition (*see Davidson v. Sachem Cent. School Dist.*, 300 A.D.2d 276, 751 N.Y.S.2d 300). In opposition, the plaintiff's expert opined, in part, that the **ground** cover beneath the apparatus from which the plaintiff fell was inherently dangerous as installed and/or maintained, because it did not meet American Society of Testing Material standards or standards established by the Consumer Product Safety Commission. These standards, however, are guidelines and not mandatory, and are insufficient to raise a triable issue of fact regarding **negligent** installation or maintenance (*see Tavares v. City of New York*, 88 A.D.3d 689, 690, 930 N.Y.S.2d 462; *Davidson v. Sachem Cent. School Dist.*, 300 A.D.2d at 277, 751 N.Y.S.2d 300; *Merson v. Syosset Cent. School Dist.*, 286 A.D.2d 668, 670, 730 N.Y.S.2d 132). Accordingly, the Supreme Court should have granted that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as alleged **negligent** maintenance of its premises.

*2 In light of our determination, we need not reach the defendant's remaining contentions.

BALKIN, J.P., CHAMBERS, DUFFY and LASALLE, JJ., concur.

All Citations

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