

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
)
Jamari Dudley,)
)
Plaintiff,)
)
vs.)
)
Florence School District One,)
)
Defendant.)
)
_____)

RECEIVED
IN THE COURT OF COMMON PLEAS
Nov 19 2021
SC Court of Appeals

C.A. No. 2019-CP-21-03260

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

On April 26, 2021, this matter came before me on Defendant Florence 1 School’s Motion for Summary Judgment. For the reasons set forth below, Defendant’s motion is granted.

On January 28, 2021, Defendant filed a motion for summary judgment to dismiss Plaintiff’s Complaint in its entirety. Plaintiff’s Complaint consists of one cause of action alleging that the District was grossly negligent in its supervision of Plaintiff, a student at West Florence High School.

By way of procedural background, on Wednesday, April 21, 2021, the Court held a conference call with counsel to discuss this case’s status on the trial roster for the week of April 26, 2021, and the pending motion for summary judgment. The Court granted the District’s request for a continuance, with opposing counsel’s consent, and scheduled a hearing on the motion for summary judgment for 5 PM on Monday, April 26, 2021, and allowed the parties an opportunity to file memoranda. On April 22, 2021, Defendant filed a Memorandum of Law in Support of its Motion for Summary Judgment. Friday, April 23, 2021, at 9:15 PM, Plaintiff’s counsel served District counsel via email two affidavits in opposition to the District’s Motion for Summary Judgment. At 4:52 PM on Monday, April 26, 2021, Plaintiff emailed opposing counsel and the Court his memorandum of law in Opposition to the Motion for Summary Judgment.

The facts in this case are not complicated.¹ On September 7, 2018, Plaintiff Jamari Dudley was a 9th grade student at West Florence High School in the District. At the beginning of the 2018-2019 school year, the school administration held an assembly for all 9th grade students to discuss school rules and expectations regarding attendance, dress code, grading and the District's Code of Conduct. The students are given the West Florence High School handbook which contains the Code of Conduct Principles for Student Behavior which students are required to sign. After the assembly, the students returned to their advisory class and turned in their signed Code of Conduct Principles for Student Behavior forms. This form contains the following language: students agree to "always seek the most peaceful means of resolving conflict, and ... will obtain the assistance of teachers, administrators, or school staff when unable to resolve conflicts on [their] own." It is emphasized to students, both the in assembly and by the advisory teacher, that if they have any kind of conflict with another student, they should seek out a teacher or an administrator to help resolve the conflict. The School Handbook also contains a provision advising students that upstairs bathrooms are off-limits during mornings and lunch.

In terms of supervision, the school assigned duty stations to staff to supervise students during mornings arrivals, afternoon departures, class transitions and lunch. At the beginning of the 2018-19 school year, five administrators and one SRO were stationed in the school's cafeteria during lunch to supervise the students. The District also prohibited access to the upstairs bathrooms during lunch.

Jamari testified at his deposition that prior to September 6, 2018, he had never had any issues with fellow student J.B. On September 6, 2018, Jamari approached student J.B. to ask him if he had been talking to Jamari's girlfriend, and J.B responded by telling him they could "take it to the bathroom right now," but Jamari told him he did not want to fight. Jamari did not report this threat to fight to anyone – not his mother, teachers, administrators or the SRO.

The next day, J.B.'s friends told Jamari that J.B wanted to fight him. Again, Jamari did not

¹ For purposes of this motion, the facts are viewed in a light most favorable to Plaintiff.

report this threat to any teacher, administrator or the SRO though he had the opportunity to do so. Instead of reporting the threat and attempting to resolve the matter without resorting to a fight, during the lunch period, Jamari voluntarily went to the upstairs “C” hall bathroom with a friend for the known purpose of fighting J.B. J.B. hit Jamari and Jamari injured his nose. Jamari went to the school nurse and told her that he hurt his nose in the “D” hall bathroom when he slipped and fell on water on the floor. He also made the same report to his mother and later to the medical personnel at the hospital. It was not until the SRO contacted Jamari’s mother that Jamari admitted that his nose was actually injured in a fight with another student.

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. Where a plaintiff fails to establish an element essential to his case, there can be no genuine issue as to any material fact, since a failure to establish even one essential element of a party's case renders the cause of action insufficient as a matter of law. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 346 S.E. 324 (S.C. 1986). Furthermore, Rule 56(e), SCRCP reads in part:

Supporting and opposing affidavits shall be made on personal knowledge, [and] shall set forth such facts as would be ***admissible in evidence***.... The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.
(emphasis added).

Our Courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence. See *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Moon v. Jordan*, 301 S.C. 161, 390 S.E.2d 488 (Ct.App.1990); *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 357 S.E.2d 25 (Ct.App.1987); see also *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct.App.1994), *aff'd*, 319 S.C. 79, 459 S.E.2d 850 (1995) (“A genuine issue of fact ... can be created only by evidence

which would be admissible at trial.”) (citing, *inter alia*, Rule 56(e), SCRCF). In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard). Under South Carolina jurisprudence, where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury. *See Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996) (noting where the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created).

The District makes two arguments in support of its motion. First, the District argues that it is immune from liability pursuant to the Tort Claims Act. In the alternative, the District argues that the undisputed evidence establishes that Plaintiff was at fault and/or that his fault exceeds any alleged fault of the District, and as a result, there is no basis for recovery from the District.

The South Carolina Tort Claims Act provides the exclusive remedy in tort against the District. S.C. Code Ann. §§ 15-78-20(b), -30(d), -30(h). In passing the Act, the South Carolina Legislature intended to waive the State's sovereign immunity under certain circumstances while, at the same time, not subjecting the State to unlimited or unqualified liability. S.C. Code Ann. § 15-78-20(a). To accomplish this objective, the Legislature established numerous exceptions to the Act's waiver of sovereign immunity. S.C. Code Ann. § 15-78-60. As an additional safeguard for the State, the Legislature expressly provided that the Act's exceptions to the waiver of immunity “must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f).

Two of the Act's immunities are directly applicable to Plaintiff's claim. Specifically, §15-78-60(20) states that a governmental entity is not liable for a loss resulting from "an act or omission of a person other than an employee, including but not limited to the criminal actions of third persons." In addition, S.C. Code Ann. §15-78-60(25), provides that a governmental entity is not

liable for a loss resulting from the entity's exercise of a:

responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student . . . *except when the responsibility or duty is exercised in a grossly negligent manner.*

(Emphasis added.) Thus, Plaintiff is required to meet the heightened standard of gross negligence in order to prevail on his claims.

As to the immunity provide in S.C. Code Ann. § 15-78-60(20), the District is not liable for any "act or omission of a person other than an employee including but not limited to the criminal actions of third persons." This exception to the State's waiver of immunity does not apply when the basis of the claim is that the negligence of the governmental entity "created" a reasonably foreseeable risk of such third-party conduct. *Moore v. Berkeley County School Dist.*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1998) (citing *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 247, 391 S.E.2d 546, 549 (1990)) In the present case, it is undisputed that the person who hit Jamari was not an employee of the District. Thus, the only remaining question for the Court whether the District created a reasonably foreseeable risk of this fight.

In answering this question, the *Moore* Court noted that the inquiry should be "focused upon the school district's alleged gross negligence in supervising both the plaintiff-student and the attacker." *Moore*, 326 S.C. at 590, 486 S.E.2d at 12. Moreover, the ultimate conclusion generally hinges on whether the District "knew or should have known" of the need to exercise control over the given situation. *Id.* at 590, 486 S.E.2d at 12-13. In looking at the present case, however, there is no evidence that the District had any reason to know that Jamari and J.B. would engage in a fight, much less that it *created* a reasonably foreseeable risk of this attack.

For instance, Jamari testified at his deposition that he never had any problems or issues with J.B. prior to September 6, 2018. The incident took place only three weeks after the beginning of the

school year and neither Jamari nor J.B. had been in any trouble at West Florence before this incident. Jamari did not report the threat from J.B. to anyone either on September 6th or the 7th and there was nothing in their behavior that would have placed the school on notice of any need for heightened supervision of either one of them.

Other jurisdictions have held as a matter of law that even verbal and physical threats of violence do not make it reasonably foreseeable that an actual act of violence will follow. *See, e.g., LaPage v. Evans*, 37 A.D.3d 1019, 1020-21 (N.Y.A.D. 2007) (holding that even following a shoving incident on a bus aisle, bus driver could not have anticipated that one of the students would suddenly attack the other 10 minutes later); *Rawls v. Bulloch County School Dist.*, 477 S.E.2d 383, 385 (Ga. App. 1997) (holding student on student attack not reasonably foreseeable where prior week a threat was made by the attacking student and reported to bus driver by the victim). In this case, there is no evidence whatsoever that anyone at the school was on notice of any potential fight between Jamari and J.B. and there is no evidence that would make it reasonably foreseeable that an act of violence was going to occur as it did. Thus, for the foregoing reasons, the District is immune from liability under S.C. Ann. § 15-78-60(20) for the altercation between Jamari and J.B. and the District is entitled to summary judgment.

Additionally, even if there is a jury issue as to whether the risk was foreseeable, Plaintiff's claim cannot survive summary judgment, because the only inference this court can make from the reliable and competent evidence presented is that the District did not act with gross negligence. Our courts have not hesitated to grant summary judgment to school districts where plaintiffs fail to establish the necessary elements of their claim. *See, e.g., Etheredge v. Richland School Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (S.C. 2000) (summary judgment granted where student was shot and killed by another student in school hallway); *Clyburn v. Sumter Co. School Dist. 17*, 317 S.C. 50, 451 S.E.2d 885 (S.C. 1994) (summary judgment granted where non-student assaulted student on school bus); *Richardson v. Hambright*, 296 S.C. 504, 374 S.E.2d 296 (S.C. 1988) (summary judgment

granted where student was injured in automobile accident en route to vocational school in private vehicle).

Gross negligence has been defined by our courts as “the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Etheredge*, 341 S.C. at 307, 534 S.E.2d at 277; *Clyburn*, 317 S.C. 50, 451 S.E.2d 885. It is a failure to exercise even slight care. *Id.* While gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court. *Id.* at 53, 887. In the present case, the undisputed evidence supports only one inference - that the District exercised at least slight care.

The *Etheredge* case is instructive regarding a school district's exercise of slight care. In *Etheredge*, a student was shot and killed by another student in the hallway while changing classes. *Etheridge* at 309, 534 S.E.2d at 276. After the Court of Appeals reversed the trial court's grant of summary judgment, the Supreme Court reversed the Court of Appeals, holding that "the students were high school age and the School District *had no direct knowledge or notice* of the animosity between [the attacker and victim]. The only reasonable inference that can be drawn is that the School District, at the very least, exercised 'slight care' to ensure the safety of its students." *Id.* at 311-12, 534 S.E.2d at 277 (emphasis added). The Court also noted the following:

The principal, assistant principal and the two security monitors constantly monitored the hallways and were in constant contact with each other by walkie talkies. The teachers stood in their doorways to watch students during the change of class. Some of the doors were locked to limit the flow of traffic. A list of suspended students was circulated daily. There was an intervention system set up to help resolve conflicts between the students. At the very least, “slight care” was taken.

Id. at 311-12, 534 S.E.2d at 277-78.

In attempting to create a genuine issue of material fact, the plaintiff in *Etheredge* relied on an affidavit of a campus monitor employed by the school who testified that the situation at the high school was volatile, students were never disciplined in proportion to the severity of their criminal

behavior, and that he did not receive sufficient training, equipment, and authority to do his job. *Id.* at 309-10, 534 S.E.2d at 276. However, the Supreme Court dismissed the plaintiff's evidence, finding "there is no evidence in [the] affidavit that links these deficiencies ... to the prevention of this tragic incident. Further, the fact that the School District might have done more does not negate the fact that it exercised 'slight care.' " *Id.* at 312, 534 S.E.2d at 278 (emphasis added).

In the present case, like *Etheredge*, the District had no direct knowledge or notice of any animosity between the students and in fact, there was none until September 6, 2018. As noted above, Jamari and J.B. had no problems or issues with each other, and Jamari did not report J.B.'s alleged threat to fight to anyone at the school. The school assigned staff to supervise students as they arrived in the morning, changed classes, ate lunch in the cafeteria and when they left school at the end of the day. For the 2018-19 school year, the school stationed five administrators and the SRO in the cafeteria to supervise students. The school also emphasized to students from the beginning of the school year that they should see any teacher or administrator or the SRO if they felt bullied or could not resolve a conflict on their own. The students, in fact, were required to sign a form agreeing that they would always seek the most peaceful means of resolving conflict and obtain the assistance of teachers, administrators, or school staff when unable to resolve conflicts on their own. The school also prohibited the students from using the upstairs bathrooms during lunch in an attempt to control their supervision. Based on these factors, I find that the District exercised slight care in the custody, supervision and control of its students.

Further, the undisputed evidence supports the finding that Jamari freely and voluntarily went to an off-limits upstairs bathroom for the purpose of fighting J.B. Clearly, he knew he should not be in that bathroom and was only there to fight the other student, and he lost the fight. The fact that the students were able to go to the bathroom without being seen does not establish gross negligence. *See Doyle v. Binghamton City School Dist.*, 60 A.D. 3d 1127 (N.Y. A.D. 3 Dept. 2009) (the fact that supervising personnel do not witness an injury at the time it occurs is not, standing alone, sufficient to establish negligent supervision). The South Carolina Supreme Court and courts across the nation

have recognized that it is "impossible for a teacher to personally supervise each student under his care every moment of the school day." *Hammond v. Scott*, 268 S.C. 137, 143, 232 S.E.2d 336, 338 (1977). See also *Green v. Bester*, 568 So. 2d 792, 795 (Ala. 1990) ("it is impossible for a teacher to personally supervise the actions of each student under his charge"); *Coleman v. Joyner*, 593 So. 2d 451, 453 (La. App. 2nd Cir. 1992) ("[c]onstant supervision of all students is not possible nor required for [a] school board to discharge its duty to provide adequate supervision"); *Collins*, 480 So. 2d at 848 ("[c]onstant supervision of all pupils is not required. In fact, it is virtually impossible 'absent a ball and chain.'").

For the above articulated reasons, I find that the District exercised at least slight care in supervising and protecting the students, and thus, summary judgment is appropriate because Plaintiffs cannot establish a genuine issue of material issue as to gross negligence.

Finally, even if the Court were to assume the District was negligent in some way, and even taking into consideration Plaintiff's late submissions in opposition to the motion for summary judgment,² Dudley's own negligence was, as a matter of law, greater than any negligence attributable to the District and the more determinative factor in causing his injuries.

The day before the fight when J.B. first threatened to fight him, Jamari did not report the threat to anyone at the school or to his mother. The next day when he heard J.B.'s friends talking about how J.B. wanted to fight him, he did not report the threat to or seek the assistance of anyone at the school. Instead, Jamari freely and voluntarily went to the bathroom to fight J.B. Jamari showed up to the bathroom first. He knew the purpose of meeting J.B. in the bathroom was to fight. I find it reasonable to infer that Jamari went to an unauthorized bathroom so that they would not be caught fighting. Jamari is at fault for not seeking assistance from an adult and for purposefully engaging in a fight in an unauthorized area. Moreover, Plaintiff has produced no competent evidence that the District or school acted in any negligent manner. For all of these reasons, it is clear that Plaintiff bears more than fifty percent of the responsibility of his injuries. When the evidence as a whole is

² Plaintiff's affidavits in opposition to summary judgment contained inadmissible hearsay.

susceptible to only one reasonable inference, no jury issue is created, and the claim should be barred under the doctrine of comparative negligence. *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996)

THEREFORE, based on the foregoing, Defendant's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

The Honorable Michael G. Nettles

April ____, 2021

Florence, South Carolina



Florence Common Pleas

Case Caption: Jamari Dudley VS Florence School District One

Case Number: 2019CP2103260

Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140