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No. 3--10--0500

Order filed April 27, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

VIRGIL ROTHROCK, Individually)	Appeal from the Circuit Court
and as father and next friend)	of the 13th Judicial Circuit
of LINDSEY ROTHROCK,)	La Salle County, Illinois
)	
Plaintiffs-Appellants,)	
)	No. 07--L--134
v.)	
)	
STREATOR TOWNSHIP HIGH SCHOOL)	
and BEAU ALBERTS,)	Honorable
)	Joseph P. Hettel
Defendants-Appellees.)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

Held: Trial court properly granted summary judgment to teacher and high school where evidence was insufficient as a matter of law to establish willful and wanton conduct.

Lindsey Rothrock was injured while participating in a physical education class taught by Beau Alberts at Streator Township High School. Lindsey's father, Virgil Rothrock, filed

suit against Alberts and the school, alleging negligence and willful and wanton conduct. After dismissing the negligence counts, the trial court granted summary judgment in favor of defendants on the willful and wanton counts. Plaintiffs appeal the trial court's entry of summary judgment. We affirm.

In the fall of 2006, Lindsey Rothrock began her freshman year at Streator Township High School. She was enrolled in a health and fitness class taught by Beau Alberts, a member of the physical education, health and driver's education department at Streator Township High School. Alberts is a certified physical education teacher and had taught at Streator Township High School since 2002.

The health and fitness class is an alternative to a traditional physical education class for students who participate in intermural athletics. The class consists of alternating days of lower body weight-lifting, upper body weight-lifting, and conditioning. The class is held in the school's weight room on most days. There were 30 to 36 students in Lindsey's health and fitness class.

At the beginning of the semester, Alberts verbally instructed the students regarding the pieces of equipment in the weight room they were to use during the class. He also demonstrated how to use each piece of equipment. He did not

demonstrate how to use equipment that was not to be used during the class.

Alberts gave the students written forms, listing the equipment they were to use each day in class. The forms had blank spaces, where the students were to record the weight and number of repetitions completed for each piece of equipment. Each day, when the students had completed the designated exercises for that day, they were to "stay busy."

As the students performed their exercises, Alberts circulated around the weight room and observed them to make sure they were performing the exercises correctly. He also answered students' questions. He paid particularly close attention to freshman and sophomore students who had less experience using the equipment. If he saw students performing an exercise inappropriately or unsafely, he would correct them.

On occasion, Alberts saw students using equipment they were not supposed to be using in the class. One of those pieces of equipment was the calf raise machine. It was not supposed to be used because it was a one-person machine. If he saw students using the calf raise machine, he would tell them to get off of it and would discipline them by making them do push-ups. Alberts never saw Lindsey use the calf raise machine.

November 21, 2006, was a lower body weight-lifting day in

the health and fitness class. After completing the assigned exercises for that day, Lindsey decided to use the calf raise machine. Lindsey learned how to use the calf raise machine by watching other students in her class use it. Lindsey had used the machine in class several times. She did not know that she was not supposed to use the machine.

As Lindsey was adjusting the calf raise machine that day, she placed her thumb directly beneath its release mechanism. A few seconds later, the weights fell on her thumb. Alberts was in the middle of the weight room, approximately 20 to 25 feet away from Lindsey, at the time. Lindsey ran to Alberts, and he immediately took her to the nurse's office. From there, Lindsey went to the hospital and later had surgery on her thumb. She is still not able to fully use her thumb.

Prior to Lindsey's injury, Alberts never had a student injured in his four years of teaching health and fitness at Streator Township High School. According to Richard Kane, the athletic director and head of the health, physical education and driver's education department of Streator Township High School, only one other student has been injured in the health and fitness class in the last nine years. That student's injury did not occur on the calf raise machine.

Lindsey's father, Virgil Rothrock, individually and on

behalf of Lindsey, filed a ten-count complaint against Alberts and Streator Township High School, alleging negligence and willful and wanton conduct. Defendants moved to dismiss the negligence counts against them, arguing that the Tort Immunity Act (745 ILCS 10/1--101 *et seq.* (West 2008)) precluded those claims. The trial granted defendants' motion to dismiss those counts. Defendants later filed a motion for summary judgment with respect to plaintiffs' willful and wanton claims. The trial court granted the motion.

Summary judgment is appropriate where the pleadings, affidavits, depositions and admissions on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2--1005(c) (West 2008). The summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. *Vilardo v. Barrington Community School District*, 406 Ill. App. 3d 713, 941 N.E.2d 257, 267 (2010). However, summary judgment is a drastic means of disposing of litigation and should not be granted unless the movant's right to judgment is clear and free from doubt. *Id.* To prove an action for willful and wanton conduct, the plaintiff must establish the existence of a duty, breach of that duty, and an injury proximately resulting from

that breach. *Guyton by Guyton v. Roundy*, 132 Ill. App. 3d 573, 578 (1985). The determination of whether a duty exists is a question of law to be decided by the court. *Qureshi v. Ahmed*, 394 Ill. App. 3d 883, 886 (2009).

Willful and wanton conduct means "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1--210 (West 2008). A party committing willful and wanton conduct must be conscious, from his knowledge of the surrounding circumstances and existing conditions, that his conduct will naturally and probably result in injury. *Vilardo*, 941 N.E.2d at 267. Conclusory allegations of willful and wanton conduct are insufficient to state a cause of action. *Cipolla v. Bloom Township High School District No. 206*, 69 Ill. App. 3d 434, 438 (1979).

Whether conduct is willful and wanton is generally a question of fact for the jury to determine. *Vilardo*, 941 N.E.2d at 267-68. However, in some circumstances, a court may decide as a matter of law if willful and wanton conduct exists. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 245 (2007); *Toller v. Plainfield School District 202*, 221 Ill. App. 3d 554, 558 (1991).

Courts have repeatedly held that the breach of a duty to

supervise students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct. See *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430 (1980); *Poelker v. Warrensburg Latham Community School District No. 11*, 251 Ill. App. 3d 270, 276 (1993); *Siegmann v. Buffington*, 237 Ill. App. 3d 832, 834 (1992); *Guyton by Guyton*, 132 Ill. App. 3d at 579; *Booker v. Chicago Board of Education*, 75 Ill. App. 3d 381, 386 (1979); *Cipolla*, 69 Ill. App. 3d at 441; *Woodman v. Litchfield Community School District No. 12*, 102 Ill. App. 2d 330, 334 (1968). "A teacher cannot be required to watch the students at all times while in school." *Mancha v. Field Museum of Natural History*, 5 Ill. App. 3d 699, 702 (1972).

Here, the trial court found that defendants owed a duty to Lindsey but that their actions did not rise to the level of willful and wanton conduct. We agree.

There was no evidence of intentional conduct by defendants. Nor did the evidence establish a conscious disregard for the safety of Lindsey or the other students in the health and fitness class. The evidence established that Alberts instructed students about the equipment they were required to use in the class, observed students using the equipment, and corrected them if they were using it improperly. At the time of Lindsey's injury,

Alberts was standing 20 to 25 feet away from her. When he saw that she was injured, he immediately took her to the nurse's office. Under these circumstances, defendants' alleged failure to supervise did not, as a matter of law, rise to a level of willful and wanton conduct. See *Lynch*, 82 Ill. 2d at 430.

Additionally, defendants did not commit willful and wanton conduct by failing to instruct the students about the proper use of the calf raise machine. The evidence established that the students in the health and fitness class were not supposed to use the calf raise machine. When Alberts saw students using the machine, he told them to stop and disciplined them. Because the calf raise machine was not part of the health and fitness class, defendants' failure to provide instruction regarding the machine did not amount to willful and wanton conduct.

Here, plaintiffs failed to establish, as a matter of law, that defendants' acts constituted willful and wanton conduct. Thus, the trial court properly entered summary judgment in favor of defendants.

The judgment of the La Salle County circuit court is affirmed.

Affirmed.