2019 IL App (2d) 180660-U
No. 2-18-0660
Order filed June 26, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MELINDA OSBORN, Individually and as Mother and next friend of L OSBORN, a minor, Plaintiff-Appellant, v. RON AMSTER and ANTIOCH COMMUNITY CONSOLIDATED SCHOOL DISTRICT 34, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 16-L-661 Honorable David Brodsky, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Question of fact existed regarding whether defendants' conduct was willful and wanton, precluding summary judgment.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Melinda Osborn (individually and as next friend of Lilleeanna Osborn) appeals a grant of summary judgment in favor of defendants, Ron Amster and the Antioch Consolidated

School District 34. The trial court granted summary judgment, finding defendants immune on two bases. For the reasons that follow, we reverse and remand.

¶ 4 II. BACKGROUND

¶ 5 This case concerns an injury sustained by Lilleeanna during gym class at W.C. Petty School. Amster was the gym teacher. Lilleeanna had a preexisting hip condition. Dr. Jennifer Belluci-Jackson restricted Lilleeanna from running and authored a note to that effect. The note was provided to the school and ultimately to Amster. Lilleeanna was injured during the third day of gym class during a soccer drill. The following evidence was submitted by the parties.

¶ 6 Lilleeanna testified via discovery deposition on August 14, 2017. She stated that she is in the seventh grade and attends the Antioch Upper Grade School. Ron Amster was her gym teacher previously. In August 2015, she suffered an accident in gym class involving her left hip. About three days before the accident, Lilleeanna had seen Dr. Belluci-Jackson about a shooting pain in her left hip. On a scale of 1 to 10, she rated it as a 6. Her pain began during a visit to a water park about a week before her appointment with Belluci-Jackson. Over the next week, she continued to experience symptoms and, on August 25, 2015, Lilleeanna was limping so she saw Belluci-Jackson. Lilleeanna testified that she had never previously sought medical treatment for a hip problem. Lilleeanna acknowledged that the doctor explained, and she understood, that she should not run. After an examination, Belluci-Jackson instructed Lilleeanna to refrain from running and wrote a note stating so.

¶ 7 The day after her appointment with Belluci-Jackson, summer break ended and Lilleeanna started school. She was in the fifth grade at this time. She brought the note to school and gave it to Mrs. Bryant, her homeroom teacher. Lilleeanna stated that Mrs. Bryant gave the note to her gym teacher. She stated that the note said, “no running.” Lilleeanna understood the note.

¶ 8 Lilleeanna had had Amster as a gym teacher since the second grade. On the first day of gym class, Lilleeanna testified, Amster told her to "sit out." On the second day of school, Lilleeanna's hip hurt more. She sat out during gym class. She did not discuss this with Amster and just did what she had done the day before. On the third day of school, her hip was still hurting. During gym class, they "had bus evacuations." By this Lilleeanna, meant that they were learning 'the rules on the bus, and, like, what to do in an accident."

¶ 9 After finishing with the bus activities, they engaged in "soccer activities." Lilleeanna participated because, "He told me to." Amster directed Lilleeanna to "go with a team." They did not discuss Lilleeanna's physical restrictions that day. Amster told Lilleeanna to "stand in a certain place." He lined two teams up, facing each other, put balls in the middle of them, and told them to play. Lilleeanna testified that she knew that she should not be running. She thought of this at the time, but did not say anything to Amster. Lilleeanna agreed that they were playing "grid soccer." In grid soccer, one person kicks the ball to another, who traps it and passes it to a subsequent person. This type of soccer did "require you to run from one end of the field to the other end of the field"; however, Lilleeanna could not recall if she actually did this." Amster never told Lilleeanna that she should only trap and pass the ball. She did recall running "up to kick the ball," during which she covered "two or three feet." She later estimated that she took 10 or 11 steps at this time. She described her motion as a "fast jog." Lilleeanna fell before she kicked the ball. Her "leg just gave out," and she felt pain in her hip. The pain was worse than the pain she had been experiencing before the fall. She landed on her left leg. Amster called the nurse, using a walkie-talkie, and he went into the school to get a wheel chair. The nurse came out to assist Lilleeanna, and then Amster brought the wheel chair out. The nurse helped

Lilleeanna stand. They took her to the nurse's office, and Lilleeanna's grandmother arrived about 10 to 15 minutes later.

¶ 10 Lilleeanna's grandmother drove her home, and her parents then took her to the emergency room. She was examined at the emergency room, and, within a few days, a surgery was performed on her left hip. After the surgery, Lilleeanna remained in the hospital for about a week. She was off school for "a couple of months maybe." During this period, she did her school work at home and had a tutor. She also underwent physical therapy following the surgery. The surgery "helped a lot," as did physical therapy. She still was experiencing some pain at the time of her deposition. When Lilleeanna returned to school, she did not participate in gym class for a while. She eventually was able to participate fully, though.

¶ 11 In June 2016, Lilleeanna experienced a problem with her right hip. Her mother noticed that she was limping. Lilleeanna explained that she felt pain in her right hip, though to a lesser degree than she had experienced in her left hip. Lilleeanna saw an orthopedic doctor and had surgery on her right hip. Lilleeanna believed it was the same type of surgery she had on her left hip. She did not know what the surgery was called, but she knew it involved putting a pin into her hip. Lilleeanna underwent physical therapy after this surgery as well, and she felt the surgery and therapy were beneficial. Her right-hip surgery was not preceded by a fall of any sort. No doctor recommended future treatment for either hip.

¶ 12 Melinda Osborn, Lilleeanna's mother, also testified via discovery deposition. Melinda had previously worked as a certified nursing assistant. She testified that she took Lilleeanna to see Dr. Belluci-Jackson on August 25, 2015, as Lilleeanna had been complaining of left-hip pain. Lilleeanna had never complained previously about such pain. Lilleeanna first informed her mother of this pain as they were returning to the car after they went swimming at a water park.

Melinda noticed that Lilleeanna had been limping a little. Melinda gave her Tylenol when they got home. Over the next few days, Lilleeanna rested her leg. Lilleeanna described her pain as "shooting." On two occasions, Melinda applied ice to Lilleeanna's hip.

¶ 13 Melinda took Lilleeanna to see Dr. Belluci-Jackson. Belluci-Jackson's physical examination did not reveal anything, so she sent Lilleeanna for X rays. The X rays revealed that no bone was broken. Belluci-Jackson thought Lilleeanna might have a groin pull. Belluci-Jackson told Melinda that Lilleeanna should not run or participate in gym class at school. She authored a note to this effect and wrote a prescription for a muscle relaxer. However, Melinda was reluctant to give Lilleeanna a muscle relaxer, and she refrained from doing so for two days. Belluci-Jackson instructed them to return if the pain did not subside.

¶ 14 The day after the visit with Belluci-Jackson was Lilleeanna's first day of school. Lilleeanna was experiencing some discomfort that morning. Lilleeanna was limping when she returned from school and said her hip was "kind of sore." Melinda sent Belluci-Jackson's note to school with Lilleeanna. She also instructed Lilleeanna not to run, as indicated in the note. The note stated, "No running in PE next two weeks, also modified PE next week." Lilleeanna later told Melinda that she had given the note to Ms. Bryant, her homeroom teacher. Lilleeanna also stated that Bryant gave the note to Amster. Melinda went to the school on August 27 to check to see that the note had been provided to the school.

¶ 15 Melinda drove Lilleeanna to school on the second day. Lilleeanna was sore. Melinda picked up Lilleeanna after school and brought her home. She noted that Lilleeanna was limping a little but thought maybe she was getting better.

¶ 16 When Lilleeanna awoke for the third day of school (August 28), she was sore. Lilleeanna wore an Ace bandage that day. Melinda again drove Lilleeanna to school that day. As they walked to the car, Melinda noted that Lilleeanna was not limping.

¶ 17 After Lilleeanna had been in school for a while on the third day, Melinda received a call from her mother stating that she was going to pick Lilleeanna up at school, as she had been hurt. When Lilleeanna and her grandmother arrived home, Melinda noted that Lilleeanna was in a lot of pain. They moved Lilleeanna to Melinda's car, and Melinda took her to Lindenhurst Vista Care. During the trip, Lilleeanna was crying. At some point, Lilleeanna said that she had fallen while playing soccer. She further stated that Amster had told her to play soccer. After they arrived at the hospital, Melinda's husband got there 5 or 10 minutes later. Lilleeanna was given pain medicine "right away." Lilleeanna reported that she injured herself while playing soccer, when she went to kick a ball and fell. The doctor ordered X rays. After initially stating that Lilleeanna did not say anything else to the doctor regarding the accident, Melinda stated that Lilleeanna told the doctor she was running when the accident occurred.

¶ 18 The X rays showed a break in Lilleeanna's left hip. The doctor stated that Lilleeanna needed immediate surgery. The doctor diagnosed "slipped capital femoral epiphysis." He explained that Lilleeanna needed a pin implanted to keep her hip in place. The pin was successfully implanted, and Lilleeanna underwent five to six months of physical therapy. She returned to school on January 3, 2016, but could not participate in gym class until early May. At the time of the deposition, there were no further medical procedures planned and no medical restrictions in place.

¶ 19 Melinda testified that in May 2016, Lilleeanna began experiencing a problem with her right hip. Melinda noted a limp, but Lilleeanna initially denied that there was a problem

(Lilleeanna later explained that she did not want to undergo another surgery). Eventually, Melinda took her to the doctor. Lilleeanna was again diagnosed with a slipped capital femoral epiphysis. The doctor stated that this could have been caused by Lilleeanna favoring her other leg following her first surgery. Lilleeanna underwent the same type of surgery she had on her left hip. Surgery was followed by about three months of physical therapy. As of May 2017, Lilleeanna was able to participate in gym class with no restrictions.

¶ 20 The discovery deposition of Ronald Amster was submitted as well. Amster testified that he holds a Master's degree in sports administration. He is currently employed as a physical educator at W.C. Petty School, where he has worked for the last 20 years. He has played and coached soccer. In gym class, the children never engage in a full soccer game. Rather, they work on drills and engage in positional soccer.

¶ 21 On August 28, 2015, Amster was the physical education teacher for the fifth grade class. Lilleeanna was one of his students. Amster stated that he had not had "any interaction with Lilleeanna prior to that year." However, he also stated that he had been her teacher for the previous three years.

¶ 22 The school has a policy for handling notes from doctors limiting a student's physical activities. The nurse places the note in a clip on the door to the gym. Amster's assistant, Brenda Jones, usually reviews the notes, and she has the student sit out or engage in modified activities, as appropriate. Occasionally, Amster receives an email directly from a parent, and he forwards it to the nurse. Sometimes, he will receive a note from a teacher, when a parent has directed it to the teacher rather than the nurse. He did not recall whether he received a note from Bryant (Lilleeanna's homeroom teacher). He did, however, recall receiving the note from Belluci-

Jackson's office regarding Lilleeanna, which, he said, came from the nurse via the clip outside the gym door.

¶ 23 On the first day of gym, Amster testified, he spoke with Lilleeanna about the note and told her not to run. They were engaged in positional soccer (this is also called "grid soccer") that day, and Amster had Lilleeanna play goalie. As a goalie, Lilleeanna only had to move "a couple steps side to side in either direction." He estimated that Lilleeanna only had four feet, at most, in which to move around. They engaged in this exercise for about 15 minutes. Amster testified that he did not recall the second day at all.

¶ 24 On the third day of the school year, gym class started with training on the school bus. After that training was completed, Amster had the children engage in a positional soccer drill. There was to be no running, Amster explained, as the drill involved "passing and trapping." Amster told Lilleeanna "to be careful when she was out there." During this drill, Lilleeanna was given a five to seven foot wide box to move around in. Amster acknowledged that a "small percentage of students" would run within the confines of the box.

¶ 25 Amster testified that he was setting up a drill on a court a few courts over from the one Lilleeanna was on when Lilleeanna was hurt. After Lilleeanna fell, Amster came over to her and asked what happened. She said that she had tried to kick a ball. She did not state whether or not she was running at the time. He asked Lilleeanna if she could get up, and she responded negatively. Jones called via walkie-talkie and summoned the nurse (Crystal Wagner). The nurse came out and instructed Amster to get a wheelchair from the nurse's office. Jones was bringing the other students in to the school at the time. When Amster returned with the wheelchair, he stated, Lilleeanna was already standing. She and the nurse were trying to adjust a wrap on her leg. Lilleeanna got into the wheelchair, and Amster pushed her to the nurse's office. Lilleeanna

stated that she wanted to go home, and Amster agreed that this was the proper course. Lilleeanna was not crying, but she appeared "very upset." After depositing Lilleeanna at the nurse's office, Amster "moved on from there." He told the nurse that he "was following [the no-running limitation] to the best of [his] ability." After Lilleeanna returned to gym class sometime in the winter, Amster had her walk the hallways and record the times. She also did other homework during gym class.

¶ 26 On cross-examination, Amster explained that Lilleeanna had a long wrap around the thigh area. She had been wearing the wrap since the first time Amster saw her on the first day of the school year. Amster stated that the drill Lilleeanna was engaged in when she was injured was "a trapping and passing game." Students "may take, you know, two or three, you know, steps" or "[p]ossibly four," "[b]ut it's not running." Students are not instructed to run, as this is a passing drill. On the first day of school, he discussed the doctor's note with Lilleeanna, showed it to her, and told her "no matter what you do, no running." He had her play goalie that day, because he "wanted to see what she could do." In order to modify gym activities, Amster had to know what Lilleeanna was capable of doing. Amster testified that he has made adaptations for students for various reasons, medical and otherwise. He agreed that he is "required to use [his] discretion to modify the PE program to adapt it to [a] child."

¶ 27 Brenda Jones also testified via discovery deposition. She is employed at W.C. Petty School as a teacher's assistant for PE class. On August 28, 2015, she had only been in that position for a few days. She had previously worked in the lunchroom. Jones read the doctor's note from Belluci-Jackson prior to Lilleeanna's injury. Jones explained that position soccer does not involve running. Students simply kick the ball to each other "until it gets to the other goal." The other team attempts to steal the passes. Jones estimated that each student was assigned to a

five-foot square. Jones has never observed a student running during this drill. She did not recall speaking to Lilleeanna about the doctor's note; however, Amster told her that he had done so, which she added, she saw happen. She did not recall what Lilleeanna's gym class did on the first two days of the school year.

¶ 28 She did recall the day Lilleeanna was injured, but she did not recall the specific drill they were doing when she was injured. After Lilleeanna fell, Jones radioed the office to inform them that an injury had occurred. She did not talk to Lilleeanna and was primarily involved with the other students.

¶ 29 On redirect-examination, Jones testified that score was not kept during positional soccer. It was played in a "relatively small area." When she observed Amster speaking with Lilleeanna about the doctor's note, she could not hear the conversation. She saw that he was holding the note and pointed to it during the conversation. On recross-examination, she reiterated that she never saw a student run during the positional soccer drill.

¶ 30 The discovery deposition of Crystal Wagner was also submitted. Wagner testified that she was the school nurse at W.C. Petty School on August 28, 2015. She is still employed as a school nurse, though at a different school. She is a Licensed Practical Nurse. She recalled providing the doctor's note to Amster. On the day of Lilleeanna's accident, Wagner was summoned, via radio, to Lilleeanna's location. Wagner arrived at the scene and observed Lilleeanna lying on the ground. Lilleeanna was moaning. Wagner asked Lilleeanna what happened, and Lilleeanna replied that "she went to kick a ball, she missed the ball, and she fell to the ground on her left side." Wagner asked if she was in pain, and Lilleeanna said it hurt a lot. Wagner asked if she wanted assistance standing, and Lilleeanna said she could do it herself. She then did so, without assistance. After she stood up, she said it hurt a lot. Wagner noted the Ace

bandage Lilleeanna was wearing was loose, so she rewrapped it. Wagner asked Amster to retrieve a wheelchair. When he returned with the wheelchair, they put Lilleeanna in it and transported her into the school building. After arriving at the nurse's office, Wagner got Lilleeanna an ice pack. Wagner called Lilleeanna's emergency contact, who came and took her home.

¶ 31 On cross-examination, Wagner explained that the bandage Lilleeanna was wearing was actually slightly below where she was injured. Neither Lilleeanna nor Amster ever stated that Lilleeanna was running prior to the accident.

¶ 32 Finally, defendants admitted that Dr. Belluci-Jackson testified that in accordance with her note limiting Lilleeanna to "modified PE," Lilleeanna should not have been participating in a soccer game or drill, jogging, or kicking a soccer ball. She further testified that common sense would indicate a student restricted from running should not play soccer. However, she agreed that she did not expressly limit Lilleeanna from such activities.

¶ 33 The record contains a bystander's report memorializing the trial court's ruling. It states as follows:

> "Judge Brodsky made extensive comments, including a finding that Defendant Ron Amster's decision to have Lilleeanna Osborn play goalie in gym class two days before her accident was an exercise in discretion under Section 2-201 of the Illinois Tort Immunity Act 745 ILCS 10/2-201 [(West 2016)]). The Court also found Defendants were entitled to 'supervisory' municipal tort immunity under Section 3-108 of the Illinois Tort Immunity Act because Defendant Ron Amster did not engage in willful and wanton misconduct (745 ILCS 10/2-201 [(West 2016)])."

This appeal followed.

¶ 34 III. ANALYSIS

¶ 35 As this appeal comes to us following a grant of summary judgment, review is *de novo*. *Malone v. American Cyanamid Co.*, 271 Ill. App. 3d 843, 845 (1995). In resolving a motion for summary judgment, a court must construe the record strictly against the movant and in the light most favorable to the party opposing the motion. *Id*. Summary judgment is appropriate if "no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id*. Summary judgment is a drastic method of resolving litigation; hence, it should only be granted if the movant's right to prevail is clear and free from doubt. *Wells v. Enloe*, 282 Ill. App. 3d 586, 589 (1996). We review the correctness of the result at which the trial court arrived, not its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). Here, the trial court found summary judgment appropriate because defendants were immune on two independent bases; if either is correct, we need not consider the alternate basis. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 36 The first basis relied upon by the trial court in granting defendants' motion for summary judgment is codified in section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/2-201 (West 2016)). That section reads as follows: "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2016). Pursuant to this statute, a public employee is immune where "the act or omission giving rise to the injuries was both a determination of policy and an exercise of discretion.." *Monson v. City of Danville*, 2018 IL 122486, ¶ 29. A policy determination is one in which competing interests are balanced and judgment is involved in

determining "what solution will best serve each of those interests." *Id.* ¶ 30. Discretionary decisions involve the exercise of " 'judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed.' " *Id.* (quoting *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 394-95 (2000)). In contrast, ministerial acts are those which are to be performed "on a given state of facts in a prescribed manner." *Id.* (quoting *Snyder v. Curran Township*, 167 Ill. 2d 466, 474 (1995) (quoting *Larson v. Darnell*, 113 Ill. App. 3d 975 (1983))). Immunity under this section is generally absolute, covering negligent conduct and willful and wanton conduct. *Monson*, 2018 IL 122486, ¶ 29.

¶ 37 However, exceptions to the immunity conferred by section 2-201 exist. As noted section 2-201 is prefaced with "Except as otherwise provided by Statute." 745 ILCS 10/2-201 (West 2016). Section 3-109 of the Act provides a potential exception. 745 ILCS 10/3-109 (West 2016). That section applies to "hazardous recreational activity" and excludes willful and wanton conduct from the scope of immunity afforded by section 2-201. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 233-34 (2007). Section 3-109(b)(3) defines "hazardous recreational activity" to include "body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants)." 745 ILCS 10/30109(b)(3) (West 2016). Here, plaintiff was engaged in soccer. We have not located a case addressing whether soccer is a "hazardous recreational activity"; however, we have located cases holding that football and trampolining are such activities. *McGurk v. Lincolnway Community School District No. 210*, 287 Ill. App. 3d 1059, 1062 (1997) (football); *Murray*, 224 Ill. 2d at 226-27 (trampolining, which is expressly mentioned in section 3-109(b)(3)). Given that at summary judgment, we must construe the evidence in the light most favorable to the party opposing the motion (*Malone*, 271 Ill. App. 3d at 845), we could not hold that soccer is or is not a "hazardous

recreational activity" as a matter of law. As such, we will assume that it is for the purpose of resolving this issue. Thus, if plaintiff successfully raised an issue of fact as to whether defendants' conduct was willful and wanton, it would defeat both of defendants' claims of immunity. At this point, we must consider plaintiff's second argument and assess if a question of fact exists as to whether defendants' conduct was willful and wanton

¶ 38 In her second argument, plaintiff asserts that the trial court erred in granting summary judgment on the issue of whether defendants' conduct was willful and wanton. Plaintiff raises this argument in the context of section 3-108(a) of the Act (745 ILCS 10/3-108(a) (West 2016)), which states, in pertinent part:

> "Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury."

As explained above, this issue is also relevant to the trial court's finding that defendants were immune under section 2-201 of the Act (745 ILCS 10/2-201 (West 2016)). In other words, if a question of fact exists regarding whether defendants' conduct was willful and wanton, immunity under both sections relied on by the trial court in granting summary judgment would not be available to defendants. If no such question of fact exists, defendants would be immune under section 3-108(a) and any further consideration of section 2-201 would be moot.

¶ 39 "Willful and wanton" is defined in the Act as "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 2016). It continues, "This definition shall apply in any case where a 'willful and wanton'

exception is incorporated into any immunity under this Act." *Id.* Willful and wanton conduct goes beyond mere negligence in that it requires a conscious choice by a defendant to either cause harm or to engage in a course of action with knowledge that it involves a risk of serious danger to another." *Doe v. Bridgeforth*, 2018 IL App. (1st) 170182, ¶ 46. Our supreme court has held that "school employees who exercised some precautions to protect students from injury, even if those precautions were insufficient, were not guilty of willful and wanton conduct." *Barr v. Cunningham*, 2017 IL 120751, ¶ 18 (citing *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430-31 (1980)). The disregard of a restriction imposed by a doctor has been held to be a factor weighing in favor of a finding that conduct is willful and wanton. See *Brugger v. Joseph Academy, Inc.*, 326 Ill. App. 3d 328, 334 (2001).

¶ 40 Conflicting evidence on this issue exists in the record. Amster testified that on the first day of gym class, he reviewed the doctor's note and instructed Lilleeanna, "There's no running in PE for you, so no matter what we do, you're not running." He then assigned her to play goalie that day. Conversely Lilleeanna testified that outside of telling her to sit out the first day, Amster did not discuss the doctor's note with her. On the third day of gym class, Amster stated, he warned Lilleeanna to be careful before they started a trap-and-pass soccer drill. Lilleeanna denied that Amster spoke to her about her left hip or the restriction placed upon her that day. Lilleeanna agreed that they were engaged in "trap and pass soccer," where "the other team kicks the ball to you." However, she added that it did require participants to run from one end of the field to the other. She also testified that she was injured when she "ran up to kick the ball." She later estimated that she ran two to three feet and also that she ran 10 or 11 steps. She characterized her motion as a "fast jog." Nothing in the record indicates that Lilleeanna exceeded the scope of the activities she might engage in during the pass-and-trap drill. Thus, it

is inferable that Amster assigned Lilleeanna to engage in an activity that involved some degree of running.

¶ 41 Moreover, evidence exists that Amster was aware that running would involve a risk to Lilleeanna. Amster testified he had Lilleeanna play goalie on the first day of gym class, as this allowed her to move only about three to four feet. Lilleeanna testified that he instructed her to sit out that day. Either way, this allows an inference that Amster was aware of the restriction, as he clearly modified her activities in response to it.

¶ 42 Moreover, we cannot say that there is undisputed evidence that Amster took some precautions during the pass-and-trap drill such that we could say as a matter of law that his conduct was not willful and wanton. Conflicting evidence existed regarding the nature of the activity Lilleeanna was directed to participate in when she was hurt. Amster testified it involved no running; Lilleeanna testified otherwise. Similarly, Amster testified that he verbally cautioned Lilleeanna while she testified that they did not discuss her restriction. Furthermore, Amster admitted that sometimes participants in trap-and-pass soccer would run to retrieve balls that left the field of play and that a small percentage of students might run within their assigned areas. Defendants point to nothing to conclusively establish that Lilleeanna would not have done either of these things had the opportunity arose. We further note that to the extent that defendants cite some of these factual propositions in arguing that Amster's actions were not willful and wanton, they seem to have forgotten that in a summary judgment motion, we must construe the record in the light most favorable to the party opposing the motion (*Malone*, 271 Ill. App. 3d at 845), that is, consistent with Lilleeanna's testimony rather than Amster's when there is a conflict.

¶ 43 We also find inapposite defendants' reliance on certain facts showing Lilleeanna's state of mind. For example, in arguing the Amster did not engage in willful and wanton behavior,

defendants point out that Dr. Belluci-Jackson and Lilleeanna's mother explained to her that she was not to run. Defendants further point to Lilleeanna's admission that she was aware of the restriction. How such facts are relevant to Amster's state of mind is not readily apparent to us, and defendants do not elaborate. Such facts might be relevant to some other issue, such as causation; however, for the purpose of assessing whether defendants are entitled to immunity, the inquiry focuses on Amster's state of mind. See *Doe*, 2018 IL App. (1st) 170182, ¶ 46.

¶ 44 We emphasize that at the summary-judgment stage of the proceedings, we may make no credibility determinations. *In re Estate of Alfaro*, 301 Ill. App. 3d 500, 508 (1998). Further, weighing evidence is premature at this point. *Id*. The only relevant issue is whether the evidence is such that a conflict of fact exists that requires resolution by trial. Here, if the trier of fact chose to believe Lilleeanna's testimony, it could find that defendants' conduct was willful and wanton.

¶ 45 Is sum, regardless of how we would resolve this case if we were able to judge credibility and weigh evidence, it is clear to us that resolution of certain factual issues requires a trial. As such, it was inappropriate to resolve this case via the drastic remedy of summary judgment. Finally, the issue of whether defendants' conduct was willful and wanton is dispositive of this entire appeal. If it was, no immunity exists under either statutory section relied on by the trial court. If it was not, then immunity exists under section 3-108(a) of the Act (745 ILCS 10/3-108(a) (West 2016)), regardless of whether defendants were also entitled to immunity under section 2-201. We therefore reverse and remand for further proceedings consistent with this opinion.

¶ 46 Reversed and remanded.