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2019 IL App (4th) 190156-U

NO. 4-19-0156

FILED
September 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KENNIDY STEPHENS, a Minor, by JENNIFER HOELSCHER, Individually and as Biological Mother and Next Friend, Plaintiff-Appellant, v. THE BOARD OF EDUCATION OF SCHOOL DISTRICT 172 ADAMS COUNTY ILLINOIS (COMMONLY KNOWN AS QUINCY PUBLIC SCHOOLS), Defendant-Appellee.	) Appeal from the) Circuit Court of) Adams County) No. 15L40))))) Honorable) Mark A. Drummond,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The school district owed a student no duty to protect her from being bumped into by another student as he ran through a crosswalk, outside school grounds, after school was dismissed.

¶ 2 Plaintiff is Kennidy Stephens, a minor, who brings this action through her mother, Jennifer Hoelscher. Defendant is the Board of Education of School District 172, Adams County, Illinois, commonly known as "Quincy Schools." Plaintiff is a student at defendant's school, and she seeks compensation for personal injuries she sustained when, after school was let out, a fellow student accidentally ran into her in a crosswalk, about half a block from the school. Her theory is that defendant willfully and wantonly failed to supervise this running student. The Adams County circuit court granted defendant's motion for summary judgment, and plaintiff

appeals. In our *de novo* review (see *Sedlacek v. Belmonte Properties, LLC*, 2014 IL App (2d) 130969, ¶ 11), we affirm the judgment because we conclude that, in these circumstances, defendant owed plaintiff no duty.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was attending summer classes at defendant's school. On June 4, 2015, when school was let out, she exited the school building and walked past a bicycle rack that was on school grounds. There was some commotion at the bicycle rack. She kept walking, leaving the school grounds and heading for a crosswalk that was approximately half a block from the school. Her mother and brother were sitting in a vehicle, on the other side of the street, waiting for her. As plaintiff was walking through the crosswalk, another student, Kaleb Leffert, accidentally ran into her from behind, knocking her down, as he was trying to catch up with someone who had stolen his bicycle from the bicycle rack. Leffert had taken off running from the bicycle rack when he spotted the thief from afar, and none of defendant's employees had told him to stop running.

¶ 5 II. ANALYSIS

¶ 6 The question here is one of law: whether defendant owed plaintiff a duty to protect her in the crosswalk from the carelessness of another student. See *id*. The answer to that question can be found in *Winston v. Board of Education of the City of Chicago*, 182 Ill. App. 3d 135 (1989).

¶ 7 In *Winston*, a kindergartner was dismissed from school at the end of the school day. *Id.* at 139. He left the school grounds, unsupervised, and began walking home. *Id.* at 137. As he was crossing a street adjacent to the school, he was struck by a car. *Id.* at 136. The complaint accused the school of "wilful and wanton behavior by discharging the five-year-old

plaintiff, knowing his trip home would be unsupervised and he would cross the highly traveled [street]." *Id.* at 137. The appellate court "agree[d] with the trial court's determination that since no duty was raised by the plaintiff and no *prima facie* case was established, no triable issue existed for the jury to consider and a directed verdict was warranted." *Id.* at 140.

¶ 8 Thus, the plaintiff in *Winston* was struck by a car when crossing the street after school was dismissed; plaintiff in the present case was struck by another pedestrian when crossing the street after school was dismissed. The plaintiff in *Winston* argued that the school should have foreseen that when he left the school unsupervised, he would cross a dangerous street, which was off school grounds, and get hit; plaintiff in the present case argues that defendant should have foreseen that when Leffert took off running at the bicycle rack, he would keep on running and collide with her in the crosswalk, which likewise was off school grounds. This case is not convincingly distinguishable from *Winston*.

¶ 9 As in *Winston*, we decline to impose portal-to-portal liability on school districts. To owe plaintiff a duty of protection from Leffert, defendant had to "stand[] in the same position" with respect to them "as do parents and guardians with regard to disciplinary and supervisory matters." *Albers v. Community Consolidated No. 204 School*, 155 Ill. App. 3d 1083, 1085 (1987). Defendant no longer stood in such a position with respect to them. School was dismissed, and they had left the school grounds. Consequently, defendant was no longer their substitute parent. As the American Law Institute explains:

> "The relationship between a school and its students parallels aspects of several other special relationships—it is a custodian of students, it is a land possessor who opens the premises to a significant public population, and it acts partially in the place of parents. *** As with the other duties imposed by this Section, it is only

> applicable to risks that occur while the student is at school or otherwise engaged in school activities." Restatement (Third) of Torts (Physical and Emotional Harm) § 40 cmt. *l* (2012).

When Leffert accidentally injured plaintiff, the two of them were not at school and were not otherwise engaged in school activities. Hence, defendant owed plaintiff no duty. See *id*.

¶ 10 To impose a duty on defendant in such circumstances would be to require defendant to have acted when it was legally powerless to act. School districts have only the powers granted to them by law (Ill. Const. 1970, art. VII, § 8), and under section 24-24 of the School Code (105 ILCS 5/24-24 (West 2016)), educational employees have authority to "maintain discipline" only "in the schools," a phrase that includes "all activities connected with the school program." When Leffert ran into plaintiff, they were not in the school, nor were they participating in an activity connected with a school program. Subjecting defendant to liability in these circumstances would be to make defendant an insurer.

¶ 11 III. CONCLUSION

¶ 12 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 13 Affirmed.