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PLAYGROUND SUPERVISION LIABILITY: OPPORTUNITY TO PREVENT INJURY?

No amount of precaution or supervision on the part of parents or supervisors will avoid every serious injuries to children participating in games, or any form of play. As a result, negligence liability is not to be presumed by a mere happening of an injury or accident. On the contrary, negligence liability requires that the accident could have been foreseen, and more importantly prevented, by a reasonably prudent person under similar circumstances

As illustrated by the school cases described herein, an alleged failure to provide more or better playground supervision is generally not sufficient to establish negligence liability, unless such failure was a significant factor in causing an otherwise preventable injury. The general principles of law cited in these school playground cases are equally applicable to supervised playgrounds and similar activities in community recreation programs. In each instance, the supervisor of young children at play has a general legal duty to act *in loco parentis*, i.e., act like the reasonable parent under similar circumstances.

CONSTANT MONITORING?

In the case of *Partin v. Vernon Parish School Board*, 343 So.2d 417 (La.App. 1977), plaintiff, age 7, was injured by a tree stump in a supervised school playground. The night before the incident, high winds had knocked down a small dead pine tree located at the edge of the school playground. Upon arriving at the school, the school janitor had removed the tree and generally cleaned up the area, except for small branches and pine cones. The stump, which the janitor described as about twenty to twenty-four inches in height and almost square and rounded on top, remained.

At the time of the incident, ninety students in grades one through three were on the school playground for noon recess. Upon her arrival on the playground, defendant's teacher saw the tree stump and cautioned the children not to play there. Following this general warning, the teacher saw plaintiff in the vicinity of the stump and told him to play elsewhere. Later, the teacher saw plaintiff laying on the stump and scolded him for disobeying. Two to three minutes later, plaintiff approached the teacher and showed her his stomach which was slightly bruised and scratched. Since he did not appear to be in any distress, the teacher did not consider the injury serious or requiring medical attention. In the afternoon, plaintiff became sick, but his teacher thought he had a virus. Upon his arrival at home, plaintiff became very sick and was taken to a hospital where he had surgery for a lacerated pancreas.

Plaintiff alleged that the defendant school board was negligent in its supervision of the children and allowing a dangerous condition on the playground. The court concluded the stump was not hazardous or dangerous because it was rounded and smooth, rather than jagged. Moreover, the court found nothing to indicate that the teacher was negligent in her supervision of plaintiff and the other children during the noon recess.

> We recognize that a school teacher charged with the duty of supervising the play of children must exercise a high degree of care toward the children, however, the teacher is not the absolute insurer of the safety of the children she supervises. Our law requires that the supervision be reasonable and commensurate with the age of the children and the attendant circumstances. There is no requirement that the supervisor, especially where the play of some ninety children is being monitored, have each child under constant and unremitting scrutiny.

In so doing, the court noted that the teacher had cautioned the youngsters that they should not play in the area of the stump. Further, she had specifically cautioned plaintiff to play elsewhere. In the opinion of the court, the teacher had no reason to know or believe that plaintiff would not comply with her instructions. More importantly, the court found no evidence that more supervision would have necessarily prevented the accident.

> Even if Mrs. Gordy had seen Paul when he approached the stump for the second time there is no showing that from her position near the see-saws she could have prevented Paul's contact with the tree stump. As is often the case, accidents such as this, involving school children at play, happen so quickly that unless there was direct supervision of every child (which we recognize as being impossible), the accident can be said to be almost impossible to prevent.

Similarly, the court found that the stump "presented no more of a hazard than would a trash barrel, a bench, a water fountain, or any other of the many objects which are normally and usually found on school playgrounds."

> A stump in itself is not of a hazardous or dangerous nature to warrant the concern which plaintiff would have the court believe. Neither Mrs. Gordy nor the School Board are unconditional insurers of the children... In a rural area such as Simpson, trees are predominant. Trees and their components are nearly everywhere. As such, children are going to play in and around them. In doing so, this doesn't cause parents much concern. We then, as parents, should not expect more of others than we do of ourselves. We cannot insulate our children from all risks which they may or may not encounter..
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> [T]he stump in question was found to be an ordinary stump, squared off on top with no jagged or knife-like protrusions... [T]he school board cannot foresee and guard against all the dangers incident to the rashness of children. It is not the insurer of the lives or safety of children.

RUNNING DANGEROUS ACTIVITY?

In the case of *Norman v. Turkey Run Community School Corp*., 411 N.E.2d 614 (Ind. 1980), plaintiff, a 7 year old second grader, was injured when she collided with a six-year-old first grade student during the defendant school's morning recess. The facts of the case were as follows:

> Both students were running across the playground and both were not looking where they were running at the time they collided. Ten teachers were assigned to playground duty at this recess. The teachers were seven classroom teachers, a music teacher, a librarian and a speech teacher. This number exceeded the normal supervision requirements for recess periods. Seven or eight of the ten teachers assigned to the general supervision of the playground were present at the time the collision occurred. All ten were present some time during the recess period.
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> At the time of the collision one had gone to the restroom and one was helping a child who had scraped his skin. These teachers were supervising one hundred eighty-eight children. There were two first grade classes, three second grade classes, one third grade class and some special education students. Two teachers were close to the children when they ran into each other. Gayle Vaught, a teacher, stated that she "just looked up and they ran into each other." She said she was unable to warn them. Sue North, another teacher, initially recalled the accident but later stated that she did not see the accident.

The trial court found that "the accident was instantaneous and that there was no opportunity for the teacher to warn the children." In addition, the trial court found that "the school discharged its duty to exercise reasonable care for Deborah Norman's well being." The trial court, therefore, granted summary judgment to defendant. Norman appealed.

The appeals court found sufficient evidence for a jury to find that the teachers were inattentive in that they either failed to observe the students or failed to warn them after they observed a dangerous situation. The defendant petitioned the state supreme court to review this determination.

According to the state supreme court, the school and teachers had a legal duty, in some instances, to "anticipate and guard against conduct of children by which they may harm themselves or others." Under the circumstances of this case, however, the court found "no indication that there was any event dangerous condition, dangerous instrumentality or special knowledge of students having a troublesome or mischievous nature being on the playground area known to the supervising teachers at the recess." On the contrary, the court found "[r]unning and playing tag are normal recess activities of young children."

> Certainly there is some remote risk of injury in all human existence and certainly in all locomotion... [Running] is not *ipso facto* [i.e. in and of itself] unreasonable conduct even though it does subject the runner to greater risk of injury than walking. Running in groups and running in games is also more hazardous than running alone, yet group running and game running are not unusual activities in school...

Applying these principles to the facts of the case, the state supreme court found "[t]he school personnel here clearly exercised ordinary and reasonable care for the safety of the children under their authority."

> In the present case, more teachers than usual were on the playground and all teachers were to generally supervise all children... . No teacher can observe every student at every instant on a playground. To look at one is to look away from another. Even if the evidence showed that one or both teachers were looking in another direction, it would not give rise to an inference of negligence on the part of either or both of them.
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> The fact that two students happened to be running toward each other would not necessarily indicate peril to them until they became close enough to make it apparent that they were going to collide. Students often run toward each other, and in every direction, when they are on a playground. The evidence here was that when one of the teachers saw this happen, it was too late to give any warning and that the collision was instantaneous...
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> More than likely most of the children were running about at the same time or at one time or another. It would put an unreasonable burden on the teacher to find her wanting in her supervision if she were not observing a particular student at the precise moment a collision was imminent.

According to the Indiana supreme court, "[a] duty to warn contemplates an opportunity to know of the danger and to have time to communicate it." In this particular instance, the court found no duty to warn because "this collision took place suddenly."

> To attempt to determine if closer attention by the teachers would have prevented this accident is to invite speculation. Even perfect attention to this incident might not have prevented it. There were also 186 other students needing attention at the same time. To hold the school personnel liable under the set of facts presented here would require them to be insurers of the safety of children in their care and impose strict liability for their safety. The settled law in Indiana is to the contrary.

Having found no evidence of negligent supervision, the state supreme court, therefore, reinstated the

summary judgment of the trial court in favor of defendant.

NEGLIGENT SUPERVISION, DEFECTIVE EQUIPMENT?

In contrast to *Partin* and Norman, there was evidence of negligent supervision in the case of *Stanley v. Board of Education City of Chicago*, 293 N.E.2d 417 (Ill.App. 1973). In this case, plaintiff, age 8, was struck in the head by a baseball bat while participating in defendant's summer recreation program. At the time of plaintiff's injury, four teenage boys were playing a game of fast pitch baseball in which a rubber ball was thrown against a wall. The teenagers asked the younger boys to move. Plaintiff moved, but later returned to within 25 to 30 feet of the game. After one of the players swung very hard at a pitch the bat left his hands, ricocheted off the building, and struck plaintiff in the head.

Under the circumstances of this case, the court found defendant was negligent in failing to properly supervise the game and supplying a defective bat. In particular, the court noted evidence that the defendant's 17-year-old supervisor was inattentive to his duties. Moreover, the court cited testimony that the knob around the handle of the bat being used in the game was frayed.

> Here, it was conceded that it was Iversen's duty to make sure that the smaller children were not playing close to where the teenagers were playing. He did not do so. Evidence was presented which, if believed, would establish that the defendant made available equipment which is ordinarily discarded because it was not as safe as it should be and that Iversen, instead of supervising, was playing basketball. Kowalczak himself testified that in his opinion perhaps 50 feet would be a safe distance between teenagers playing fast-pitching and eight-year-olds.

PLAYGROUND ROCKS DANGEROUS?

In contrast to the dangerous situation and defective equipment on the playground in *Stanley*, the court in *Fagan v. Summers*, 498 P.2d 1227 (1972), found the injury was caused by a condition which is normally and usually found on school playgrounds. In so doing, the *Fagan* court found rocks on a playground to be similar to the stump in *Partin*. In this case, plaintiff, age 7, was struck in the eye by a rock during noon recess on the defendant school's playground. Another student threw the rock which hit larger rock, bounced up, and struck plaintiff. Plaintiff lost his sight in the injured eye. Plaintiff alleged that the defendant school district "should have put the playground in better shape" and provided more supervisors.

According to the state supreme court, the defendant school could be held liable for an injury resulting from a dangerous and defective condition on the playground. The court, however, found no legal basis for necessarily holding rocks on the ground to be a dangerous and defective condition. On the contrary,

the court found a rock left on the ground will hurt no one. Further, the court noted that "some such missiles could doubtless be found on any school grounds."

In this particular instance, the court found plaintiff was not injured by the mere existence of rocks on the playground. Rather, plaintiff's injury was clearly caused by the intervening act of the boy who picked up and threw the rock. Moreover, the state supreme court held the school was not required to provide constant and unremitting scrutiny of all precise spots where every phase of play activities is being pursued. In so doing, the court recognized the impossibility of a teacher supervising every minute detail of every activity. As a practical matter, the court acknowledged that a teacher cannot anticipate the varied and unexpected acts which occur daily in and about the school premises. In particular, the court noted that small boys may indulge in horseplay when a teacher's back is turned.

Applying this reasoning to the facts of the case, the state supreme court found more supervision would not have necessarily prevented plaintiff's injury. As a result, the alleged negligent supervision of the teacher was not the proximate (i.e., legal) cause of plaintiff's injury. In reaching this conclusion, the court found the time between the act of the student and the injury to plaintiff was so short that the teacher had no opportunity to prevent the injury.

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