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NAIONNA HUGHES ET AL. *v.* BOARD OF EDUCATION OF THE CITY OF WATERBURY ET AL.
(AC 45354)

Elgo, Cradle and Keller, Js.

Syllabus

The plaintiffs, H, a middle school student who attended public school in Waterbury, and her mother, sought to recover damages from the defendants, the city of Waterbury, its board of education, V, a teacher at H's school, and G, a counselor at H's school, for damages incurred as a result of the defendants' alleged negligent failure to prevent an incident from occurring between H and A, another student, while the two were at school. In their complaint, the plaintiffs alleged that the defendants allowed A and H, at different times, to leave V's classroom unsupervised. A entered a room that was typically used by G, where he remained alone and unsupervised. Thereafter, H also entered G's room without supervision. A, who had aggressive tendencies toward H, then used a "dangerous metal object," which he had found in G's room, to strike H. The plaintiffs alleged that the defendants' actions were negligent because, inter alia, they failed to supervise A and H and they allowed the metal object to be in G's room within reach of the students. The defendants moved to strike all nine counts of the plaintiffs' complaint, alleging that the plaintiffs had failed to state a claim for which relief could be granted because their claims were barred by the doctrine of governmental immunity and, although the plaintiffs had invoked the identifiable victim subject to imminent harm exception to governmental immunity, they failed to plead facts that would bring their claims within the scope of that exception. The trial court granted the defendants' motion, and, after the plaintiffs failed to replead their case, as was permitted pursuant to the applicable rule of practice (§ 10-44), the trial court granted the defendants' motion for judgment. On the plaintiffs' appeal to this court, *held* that the trial court did not err in granting the defendants' motion to strike: because the conduct at issue, namely, the supervision of schoolchildren, was discretionary in nature, the defendants were entitled to governmental immunity pursuant to the applicable statute (§ 52-557n) unless an exception to the doctrine applied; moreover, contrary to the plaintiffs' assertions, the identifiable victim subject to imminent harm exception to governmental immunity did not apply to their claims because, although H was an identifiable victim as a public school student, the plaintiffs failed to allege facts sufficient to demonstrate that it was apparent to the defendants that their failure to provide adequate supervision of the students would subject H to imminent harm, the risk of which was so great that the defendants had a clear and unequivocal duty to act immediately to prevent it, as the complaint did not include detailed factual allegations regarding the manner in which the incident unfolded, including the specific nature of the metal object, and the apparentness of imminent harm to the defendants; furthermore, following the granting of the motion to strike, the plaintiffs did not avail themselves of the opportunity to revise their complaint to allege facts that would bring the complained of acts within the identifiable victim subject to imminent harm exception, as was permitted pursuant to Practice Book § 10-44.

Argued March 20—officially released August 22, 2023

Procedural History

Action to recover damages for, inter alia, the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *Roraback*, *J.*, granted the defendants' motion to strike the plaintiffs' complaint; thereafter, the court, *Pierson*, *J.*, granted the defendants' motion for judgment and rendered judgment thereon,

from which the plaintiffs appealed to this court. *Affirmed.*

John Serrano, for the appellants (plaintiffs).

Daniel J. Foster, corporation counsel, for the appellees (defendants).

Opinion

ELGO, J. The plaintiffs, Naionna Hughes and her mother, Juanita Jones,[1] appeal from the judgment of the trial court rendered in favor of the defendants, the Board of Education of the City of Waterbury (board), the city of Waterbury (city), Irena Varecka, and Jessica Giorgi. On appeal, the plaintiffs claim that the court improperly granted the defendants' motion to strike their complaint on the ground of governmental immunity. More specifically, they contend that the court improperly concluded that the identifiable victim subject to imminent harm exception to governmental immunity did not apply. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts, as alleged in the plaintiffs' complaint; see *Picco* v. *Voluntown*, 295 Conn. 141, 144 n.5, 989 A.2d 593 (2010); are relevant to our resolution of this appeal. At all relevant times, Hughes was a resident of Waterbury who attended West Side Middle School (school), a public school under the control of the board. Varecka and Giorgi were employed by the board as a teacher and a counselor, respectively, at the school.

The present action concerns what transpired in a room at the school normally used by Giorgi (Giorgi's room) at approximately 12:30 p.m. on March 6, 2018.[2] The material allegations are as follows: "[The defendants] allowed [Hughes] to leave [Varecka's] classroom alone, unprotected and unsupervised. . . . [The defendants] allowed [Hughes] to be unprotected and unsupervised in [Giorgi's room]. . . . [The defendants] allowed a student hereafter referred to as 'Alex' to leave [Varecka's] classroom unsupervised. . . . [The defendants] allowed Alex to remain alone and unsupervised in [Giorgi's room] and they allowed him to be present and unsupervised in that room when [Hughes] arrived there. . . . [The defendants] allowed a dangerous metal object to be located in [Giorgi's room] within the reach of students, including Alex. . . . [The defendants] allowed Alex and [Hughes] to be unsupervised and alone together when the board and its agents, servants and employees, including [Varecka] and [Giorgi], knew or should have known that Alex had aggressive tendencies, including aggressive tendencies toward [Hughes]. . . . Varecka and [Giorgi] failed to communicate with each other, and/or with other agents, employees or servants of the board, to make sure that [Hughes] and Alex would not be alone together and unsupervised. . . . [T]heir failure to supervise [Hughes] and . . . Alex allowed Alex to strike [Hughes] with the metal object. . . . [T]hey did not warn [Hughes] that she would find herself alone and unsupervised with Alex in [Giorgi's room]." The complaint further alleged that Hughes sustained "physical, emotional and psychological injuries, including facial lacerations and scarring, pain and shock" as a result

thereof.

In each of the nine counts, the plaintiffs also alleged that the foregoing allegations "(A) [r]endered [Hughes] an identifiable person subject to imminent and foreseeable harm; (B) [w]ere apparent to [the defendants] or, in the exercise of reasonable due care and proper diligence . . . were discoverable and should have been apparent to [them]; (C) [w]ere likely to have caused [Hughes] the harm that she sustained; (D) [p]resented a probable likelihood of harm to [Hughes] which was sufficient to place upon the [defendants] a clear, unequivocal duty to alleviate the dangerous conditions and circumstances; and (E) [r]equired immediate action by the [defendants] to prevent the harm which [Hughes] sustained."

Approximately six months after this action was commenced, the defendants moved to strike all nine counts of the complaint, alleging that the plaintiffs had "failed to state a claim for which relief can be granted because, as a matter of law, any duty allegedly breached by the defendants . . . was discretionary." The plaintiffs filed an objection to that motion, in which they maintained that the identifiable victim subject to imminent harm exception to governmental immunity applied. In its November 24, 2021 memorandum of decision, the court disagreed with the plaintiffs and concluded that they had not alleged facts sufficient to implicate that exception. The court thus granted the defendants' motion to strike the complaint in its entirety. When the plaintiffs failed to replead their case, as permitted under our rules of practice; see *Tracy* v. *New Milford Public Schools*, 101 Conn. App. 560, 566, 922 A.2d 280 (2007); the defendants filed a motion for judgment, which the court granted on February 28, 2022, and this appeal followed.

On appeal, the plaintiffs claim that the court improperly granted the motion to strike their complaint because the facts alleged therein sufficiently implicate the identifiable victim subject to imminent harm exception to discretionary governmental immunity. We disagree.

At the outset, we note the well established standard that governs our review. "[B]ecause a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling . . . is plenary." (Internal quotation marks omitted.) *Doe* v. *Cochran*, 332 Conn. 325, 333, 210 A.3d 469 (2019). "For the purpose of ruling upon a motion to strike, the facts alleged in a complaint, though not the legal conclusions it may contain, are deemed to be admitted." (Internal quotation marks omitted.) *Murillo* v. *Seymour Ambulance Assn., Inc.*, 264 Conn. 474, 476, 823 A.2d 1202 (2003). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.)

Bridgeport Harbour Place I, LLC v. *Ganim*, 303 Conn. 205, 213, 32 A.3d 296 (2011). Furthermore, "where it is apparent from the face of the complaint that [a] municipality was engaging in a governmental function while performing the acts and omissions complained of by the plaintiff, the defendant is not required to plead governmental immunity as a special defense and may attack the legal sufficiency of the complaint through a motion to strike." *Doe* v. *Board of Education*, 76 Conn. App. 296, 299 n.6, 819 A.2d 289 (2003); see also *Violano* v. *Fernandez*, 280 Conn. 310, 326, 907 A.2d 1188 (2006) (expressly declining "the plaintiffs' invitation to abandon our well established practice permitting resolution of the issue of governmental immunity by a motion to strike").

Municipalities in this state generally are "immune from liability unless the legislature has enacted a statute abrogating such immunity."[3] *Gaudino* v. *East Hartford*, 87 Conn. App. 353, 355, 865 A.2d 470 (2005). The tort liability of a municipality is codified at General Statutes § 52-557n, which "abandons the common-law principle of municipal sovereign immunity and establishes the circumstances in which a municipality may be liable for damages. . . . One such circumstance is a negligent act or omission of a municipal officer acting within the scope of his or her employment or official duties. . . . [Section] 52-557n (a) (2) (B), however, explicitly shields a municipality from liability for damages to person or property caused by the negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." (Internal quotation marks omitted.) *Martinez* v. *New Haven*, 328 Conn. 1, 8, 176 A.3d 531 (2018). As our Supreme Court has explained, "a municipality may be held liable for the negligent performance of a duty only if 'the official's duty is *clearly* ministerial.' " (Emphasis in original.) *Northrup* v. *Witkowski*, 332 Conn. 158, 188, 210 A.3d 29 (2019); see also *Doe* v. *New Haven*, 214 Conn. App. 553, 564, 281 A.3d 480 (2022) ("a municipality may be held liable for its employee's negligently performed ministerial acts but is . . . entitled to immunity for the performance of discretionary governmental acts"). At no time have the plaintiffs alleged that the conduct at issue in this case, which concerns the supervision of schoolchildren, is ministerial in nature. Because that conduct indisputably is discretionary in nature; see, e.g., *Costa* v. *Board of Education*, 175 Conn. App. 402, 407–408, 167 A.3d 1152, cert. denied, 327 Conn. 961, 172 A.3d 801 (2017); the defendants are entitled to governmental immunity unless an exception to that doctrine applies.

The protection extended to discretionary governmental acts is qualified by a "very limited" exception that "applies when the circumstances make it apparent to the [municipal] officer that his or her failure to act would be likely to subject an identifiable person to

imminent harm . . . . By its own terms, this test requires three things: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. . . . If the plaintiffs fail to establish any one of the three prongs, this failure will be fatal to their claim that they come within the imminent harm exception." (Internal quotation marks omitted.) *Strycharz* v. *Cady*, 323 Conn. 548, 573–74, 148 A.3d 1011 (2016). "[P]ublic schoolchildren are 'an identifiable class of beneficiaries' of a school system's duty of care for purposes of the imminent harm to identifiable persons exception." *Martinez* v. *New Haven*, supra, 328 Conn. 8–9. The defendants here concede that Hughes was an identifiable victim because she was a public school student at school during school hours when the alleged incident transpired.

The issue, then, is whether the plaintiffs alleged facts sufficient to establish the existence of an imminent harm to Hughes that was apparent to the defendants. To meet that burden, the plaintiffs "must satisfy a four-pronged test. First, the dangerous condition alleged by the plaintiff must be apparent to the municipal defendant. . . . We interpret this to mean that the dangerous condition must not be latent or otherwise undiscoverable by a reasonably objective person in the position and with the knowledge of the defendant. Second, the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff. A dangerous condition that is unrelated to the cause of the harm is insufficient . . . . Third, the likelihood of the harm must be sufficient to place upon the municipal defendant a clear and unequivocal duty . . . to alleviate the dangerous condition. . . . [W]e consider a clear and unequivocal duty . . . to be one that arises when the probability that harm will occur from the dangerous condition is high enough to *necessitate* that the defendant act to alleviate the defect. Finally, the probability that harm will occur must be so high as to require the defendant to act *immediately* to prevent the harm." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) *Williams* v. *Housing Authority*, 159 Conn. App. 679, 705–706, 124 A.3d 537 (2015), aff'd, 327 Conn. 338, 174 A.3d 137 (2017).

The allegations set forth in the plaintiffs' complaint do not meet that demanding standard. Although the plaintiffs allege that the defendants were negligent in allowing Hughes and Alex to leave Varecka's classroom unsupervised, they do not allege that Hughes and Alex were permitted to do so at the same time.[4] Rather, their allegation that the defendants negligently "allowed Alex to remain alone and unsupervised" in Giorgi's room prior to Hughes' arrival necessarily indicates that the two students were not together at all times. Moreover, although the plaintiffs allege in their complaint that the

defendants "allowed a dangerous metal object to be located in [Giorgi's room]," they failed to specify what that object was, where it was located, or how long it had been there. Was it a pencil sharpener affixed to a wall, a paperweight on a desk, a hammer inadvertently left in the room by maintenance staff? The nature of the object, as well as its location and duration in the room, bears directly on the question of whether it presented an imminent harm to Hughes. See, e.g., *Martinez* v. *New Haven*, supra, 328 Conn. 11–12 (imminent harm exception did not apply in case where "there [was] no evidence that possessing safety scissors in the auditorium violated any school policy" and defendants "had no reasonable way to anticipate" plaintiff's injuries); *Haynes* v. *Middletown*, 314 Conn. 303, 325–26, 101 A.3d 249 (2014) (imminent harm exception applied in case where school locker "was in a dangerous condition and . . . had been in that condition since the beginning of the school year, seven months before the [plaintiff's] injury occurred"); *Bacote* v. *New Haven*, Superior Court, judicial district of New Haven, Docket No. CV-06-5005855-S (April 16, 2010) (imminent harm exception applied in case where "there was a dangerous post [on the school playground] protruding from the ground and said post was present for a sufficient time so that the defendants had notice of the dangerous condition").

To implicate the identifiable victim subject to imminent harm exception to governmental immunity, it is not enough to allege "that a harm may reasonably be anticipated." (Internal quotation marks omitted.) *Haynes* v. *Middletown*, supra, 314 Conn. 314–15 n.6. Rather, a plaintiff must allege the existence of "a specific imminent harm"; *Doe* v. *Petersen*, 279 Conn. 607, 620–21, 903 A.2d 191 (2006); the risk of which "must be so great that the municipal defendant[s] had a clear and unequivocal duty to act immediately to prevent it." *Haynes* v. *Middletown*, supra, 315 n.6. The allegations contained in the plaintiffs' complaint lack that requisite specificity. The plaintiffs allege that the defendants were negligent in permitting Hughes and Alex, at differing times, to depart Varecka's classroom unsupervised. They further allege that that the defendants knew or should have known that, after departing that classroom, Hughes would head to Giorgi's room, where Alex already would be present and alone, and that Alex would then strike Hughes in the face with an unidentified metal object. Those allegations do not suffice to satisfy "the demanding imminent harm standard"; id., 321; which imposes a clear duty on the defendants to act immediately in the face of a dangerous condition that was apparent to the defendants and was "so likely to cause harm . . . ." *Martinez* v. *New Haven*, supra, 328 Conn. 11; see also *Doe* v. *New Haven*, supra, 214 Conn. App. 580 ("[f]or purposes of determining whether a plaintiff was subject to imminent harm, [i]mminent does not simply mean a foreseeable event at some

unspecified point in the not too distant future" (internal quotation marks omitted)).

A motion to strike does not admit merely conclusory language contained in a complaint. See *Novametrix Medical Systems, Inc.* v. *BOC Group, Inc.*, 224 Conn. 210, 215, 618 A.2d 25 (1992). The plaintiffs' complaint does not set forth detailed factual allegations as to the manner in which the incident in question unfolded and the apparentness of imminent harm to school officials.[5] There is no allegation that, when Hughes left Varecka's classroom, school officials knew or should have known that she would end up in Giorgi's room or that they knew or should have known that Alex would be in that room when she arrived. "In order to meet the apparentness requirement, the plaintiff must show that the circumstances would have made the [municipal] agent aware that his or her acts or omissions would likely have subjected the victim to imminent harm. . . . This is an objective test pursuant to which we consider the information available to the [municipal] agent at the time of [his or] her discretionary act or omission. . . . We do not consider what the [municipal] agent could have discovered after engaging in additional inquiry." (Citations omitted; footnote omitted.) *Edgerton* v. *Clinton*, 311 Conn. 217, 231, 86 A.3d 437 (2014); see also *Ahern* v. *Board of Education*, 219 Conn. App. 404, 424, 295 A.3d 496 (2023) ("it is the specific harm that befell the plaintiff that must be apparent to satisfy the apparentness prong of the [imminent harm] exception" (emphasis omitted; internal quotation marks omitted)). In the present case, the facts alleged in the plaintiffs' complaint are insufficient to establish that it was apparent to the defendants that the risk of harm was so great when Hughes departed Varecka's classroom that their "duty to act immediately to prevent the harm was clear and unequivocal." *Haynes* v. *Middletown*, supra, 314 Conn. 322 n.14.

At oral argument before this court, counsel for the plaintiffs acknowledged that, following the granting of the defendants' motion to strike, the plaintiffs did not avail themselves of the opportunity to revise their complaint to allege facts that would bring the complained of acts within the imminent harm exception to governmental immunity, as permitted under our rules of practice. See Practice Book § 10-44 ("[w]ithin fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading"); *Silver Hill Hospital, Inc.* v. *Kessler*, 200 Conn. App. 742, 750 n.5, 240 A.3d 740 (2020) ("our rules of practice allow a litigant to replead to cure the deficiencies"). Counsel also stated that he had hoped to ascertain additional factual details of the incident in question through subsequent discovery. As our Supreme Court has noted, however, "nothing in the rules of practice prevented the plaintiffs from requesting the trial court to stay temporarily the motion to strike pending limited

discovery . . . .” *Violano* v. *Fernandez*, supra, 280 Conn. 325; see also id. (“the plaintiffs . . . were able to take two depositions, including one of [the defendant], prior to the trial court’s ruling on the motion to strike”).

In light of the foregoing, we conclude that the plaintiffs failed to allege facts sufficient to demonstrate that it was apparent to the defendants that their failure to provide adequate supervision on March 6, 2018, likely would subject Hughes to imminent harm. Accordingly, the court properly granted the defendants’ motion to strike.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Juanita Jones commenced this action in both her individual capacity and as parent and next friend of Naionna Hughes, her minor child. For clarity, we refer to Hughes and Jones individually by name and collectively as the plaintiffs.

[2] The plaintiffs’ complaint contains nine counts. The first eight counts sound in negligence and were brought pursuant to General Statutes § 52-557n. Counts one through four were brought by Hughes against the board, the city, Varecka, and Giorgi. Counts five through eight contain largely identical allegations brought by Jones against those same defendants and additionally allege that, as the proximate result of the defendants’ actions, Jones incurred medical expenses on behalf of Hughes. In count nine, Jones sought indemnification for negligence from the board and the city pursuant to General Statutes §§ 7-465 and 10-235. That indemnification claim was derivative of the aforementioned negligence claims. See, e.g., *Daley* v. *Kashmanian*, 344 Conn. 464, 470 n.4, 280 A.3d 68 (2022) (“in the absence of a [viable] common-law negligence claim . . . there would be no basis for a statutory indemnification claim against the [municipality] pursuant to § 7-465” (internal quotation marks omitted)).

[3] “Town boards of education, although they are agents of the state responsible for education in the towns, are also agents of the towns and subject to the laws governing municipalities.” *Cahill* v. *Board of Education*, 187 Conn. 94, 101, 444 A.2d 907 (1982).

[4] The complaint does not specify why Hughes and Alex were permitted to leave Varecka’s classroom, such as for a bathroom break or some other purpose. The complaint also does not allege that either student was permitted to leave Varecka’s classroom for the purpose of visiting Giorgi or her room.

[5] See, e.g., *Doe* v. *Madison*, 340 Conn 1, 26 n.24, 34, 262 A.3d 752 (2021) (plaintiff identified “seventeen facts” that “render[ed] him a person subject to imminent harm, with the likelihood of that harm apparent to the defendants as public officials”); *Lopez* v. *Bridgeport*, Superior Court, judicial district of Fairfield, Docket No. CV-15-6051932-S (June 27, 2016) (62 Conn. L. Rptr. 593, 600) (“[T]he facts alleged are compelling. The allegations show that the school had a policy, enacted to ensure the safety of special needs students, that prohibited more than one person to use the restroom at a time. There are also allegations that the individual defendants knew that [the plaintiff] and the other students required focused supervision when transitioning from the classroom to the cafeteria, knew that [the plaintiff] was unable to protect himself from sexual and physical assault, and knew that [the plaintiff] would be exposed to danger if left unsupervised. Furthermore, the special education teachers and paraprofessionals observed a practice of staggering the paraprofessionals throughout the line of students when they left the classroom to go to lunch. Finally, there are allegations that the defendants were aware of the ages, disabilities, and predispositions of the students in the class. In sum, the defendants adopted, but did not follow, measures to prevent students from being injured in specific ways; the magnitude of the risk was great and the probability that harm would occur was high.”); *Doe* v. *Board of Education*, Superior Court, judicial district of New Haven, Docket No. CV-10-5033148-S (June 15, 2011) (plaintiffs alleged that defendant teachers were negligent in “fail[ing] to heed the request of [the plaintiff] that his perpetrator not be permitted to leave the classroom with him, for a bathroom break” (internal quotation marks omitted)).