

STATE OF MICHIGAN
COURT OF APPEALS

PHILLIP BREWSTER, by his Next
Friend, CHANLAR BREWSTER,

Plaintiff-Appellee,

v

JAMES SMITH,

Defendant-Appellant,

and

DETROIT BOARD OF EDUCATION,
WESLEY RAY, MS. EDWARDS,
and DAVID PORTER,

Defendants.

UNPUBLISHED
June 11, 1999

No. 204608
Wayne Circuit Court
LC No. 96-629972 NO

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Defendant James Smith appeals by leave granted from an order denying his motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred because of immunity granted by law). We reverse.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a matter of law. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). Dismissal on a motion for summary judgment is appropriate only where the plaintiff's claim is so clearly unenforceable as a matter of law that no factual development could possibly justify allowing the plaintiff to prevail. *Young v Michigan Mutual Ins Co*, 139 Mich App 600, 603; 362 NW2d 844 (1984).

Plaintiff is seeking to recover for injuries allegedly resulting from an incident involving a fellow student on the grounds of their elementary school. Plaintiff included defendant Smith, principal of the

school, among the named defendants, alleging gross negligence stemming from a failure to supervise subordinates and students. Defendant's sole argument on appeal is that plaintiff's claim is barred by the governmental immunity statute, MCL 691.1407; MSA 3.996(107), because plaintiff has not presented sufficient evidence to show that defendant Smith's conduct was grossly negligent or a proximate cause of plaintiff's injury. We agree.

MCL 691.1407(2); MSA 3.996(107)(2) provides that every "officer and employee of a governmental agency . . . shall be immune from tort liability for injuries to persons . . . caused by the officer [or] employee . . . while in the course of employment or service." Subsection (2)(c), however, establishes an exception where the state agent's conduct constitutes "gross negligence that is the proximate cause of the injury," defining "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." The principal of a public school is an employee of a governmental agency for purposes of the immunity statute. See, e.g., *Vermilya v Dunham*, 195 Mich App 79; 489 NW2d 496 (1992). At issue in this case is whether plaintiff's allegations against defendant could establish a case of gross negligence.

In actions concerning ordinary negligence, the plaintiff must prove duty, breach, causation, and damages. *Schuster v Sallay*, 181 Mich App 558, 562; 450 NW2d 81 (1989), citing *Schanz v New Hampshire Ins Co*, 165 Mich App 395, 402; 418 NW2d 478 (1988). In light of the immunity statute, however, the breach of a principal's duty to a student must rise to the level of "gross negligence" as statutorily defined.

"Generally, an individual has no duty to protect another who is endangered by a third person's conduct." *Murdock v Higgins*, 454 Mich 46, 54; 559 NW2d 639 (1997). However, a "special relationship" can give rise to a defendant's duty to protect an individual from harm by a third person, if that relationship exists between the defendant and either the victim or the third party. *Id.*

School teachers and their students have a special relationship: "At least in a limited sense the relation of a teacher to a pupil is that of one *in loco parentis*." *Gaincott v Davis*, 281 Mich 515, 518; 275 NW 229 (1937). However, that relationship "is coterminous with the teacher's presence." *Cook v Bennett*, 94 Mich App 93, 98; 228 NW2d 209 (1979). By logical extension, a principal has the same special relationship with a student, the duty stemming from that relationship likewise being coterminous with the principal's presence.

In this case, the undisputed facts are that plaintiff and the offending other student were outside the school building before school began on the day in question. The bell signaling the start of school had just rung when the other student grabbed and lifted plaintiff, then slipped and fell on him, causing serious injury. Defendant had implemented a policy according to which faculty members were responsible for supervising the students outside the building before classes began, but plaintiff alleges that no faculty members were present when he was injured. Because plaintiff does not allege that defendant was present, or obliged to be present, when plaintiff was injured by another student, plaintiff's allegations are not legally sufficient to support a finding that defendant breached any duty he had to plaintiff. That defendant established a policy intended to ensure the orderly conduct of students before school does not make defendant strictly liable if the policy fails in plan or execution. Plaintiff has failed to present

sufficient evidence to show defendant's conduct was grossly negligent, a requirement to overcome governmental immunity. For these reasons, the trial court erred in failing to grant defendant summary disposition under MCR 2.116(C)(7).

Reversed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Peter D. O'Connell