Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT Justice — IA Part 14

STEVEN MORRISON, etc., et al. x

– against –

CHRIST THE KING REGIONAL HIGH SCHOOL x

Index Number 25923 2005

Motion Date October 7, 2008

Motion Cal. Number 21

Motion Seq. No. 1

The following papers numbered 1 to 11 read on this motion by defendant for summary judgment to dismiss plaintiffs' complaint in its entirety.

	Papers Numbered
Notice of Motion – Affidavits – Exhibits	1–7
Answering Affidavits – Exhibits	8–9
Reply Affidavits	10–11

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff Morrison and his parents seek to recover damages for plaintiff's injuries allegedly sustained on or about December 13, 2003, when plaintiff was stabbed outside defendant's school doors.

The undisputed facts are as follows: Plaintiff attended a chaperoned holiday dance sponsored by defendant. Each student was permitted to invite one guest. During plaintiff's attendance at the dance, he was pushed by another male attendee (Guest 1). One of the chaperones witnessed the incident and intervened, at which point Guest 1 and his friend (Guest 2) were escorted out by two other chaperones. As they were leaving, Guest 1 stated to plaintiff, "I am going to see your bitch ass." The dance continued

without incident and the students were eventually dismissed from same approximately one hour later. As plaintiff exited the school, Guest 1 and Guest 2 emerged from behind the building, when Guest 1 said to plaintiff "What's up now, bitch." Thereafter, a friend of plaintiff attempted to intervene, at which point Guest 2 brandished a knife from his pants pocket and began chasing plaintiff. Plaintiff's cousin came to assist plaintiff, and the former was attacked by Guest 2 with the knife. Another student also became aware of the attack and attempted to help; he was also stabbed by Guest 2 as a result. Ultimately, Guest 2 slashed plaintiff about the face and chest. Plaintiff testified that this entire altercation "happened real, real fast."

Defendant proffers the following legal arguments in support of its motion; to wit: (1) defendant owed no duty to provide police protection to plaintiff; and (2) defendant's duty was only that which could have prevented foreseeable injury to plaintiff–defendant had no notice of the act of violence perpetrated upon plaintiff, such that same was sudden, impulsive, and unanticipated.

As a preliminary matter, this court notes that plaintiff does not allege in his complaint that defendant owed him a special duty; thus, defendant's arguments with respect to its denial of same is moot for purposes of the instant motion.

Mirand v City of New York (84 NY2d 44 [1994]) and its progeny do, however, give courts the standard of care that schools owe its students. Schools have a duty to adequately supervise students in their charge, and will be held liable for foreseeable injuries proximately caused by the lack thereof (see Smith v Poughkeepsie City School Dist., 41 AD3d 579 [2007]; Chalen v Glen Cove School Dist., 29 AD3d 508 [2006]). The standard of care used to determine whether a school has breached its duty of supervision and protection is to compare it to that of a parent of ordinary prudence in similar circumstances (see Doe v Rohan, 17 AD3d 509 [2005]; Doe v Whitney, 8 AD3d 610 [2004]). Schools are not, though, insurers of students' safety as they cannot reasonably be expected to continuously supervise and control their students (see Paca v City of New York, 51 AD3d 991 [2008]; De Los Santos v New York City Dept. of Educ., 42 AD3d 422 [2007]). To determine whether a breach of the above duty exists, plaintiff must establish that defendant had sufficiently specific knowledge or notice of the dangerous conduct, such that the third-party act could have reasonably been anticipated, and that the breach was the proximate cause of plaintiff's injuries (see Whitfield v Board of Educ. of City of Mount Vernon, 14 AD3d 552 [2005]; Wienclawski v New York School for Deaf, 300 AD2d 652 [2002]). Lack of supervision will not be the proximate cause of plaintiff's injuries when the

accident at issue occurred in such a short span of time that even the most intense supervision could not have prevented it (see Paca, 51 AD3d at 993; Swan v Town of Brookhaven, 32 AD3d 1012 [2006]).

In the case at bar, defendant, as a provider of a school-sponsored dance, owed plaintiff the same duty of care and supervision owed by a reasonably prudent parent in similar circumstances (see De Los Santos, 42 AD3d at 423; Cranston v Nyack Pub. Schools, 303 AD2d 441 [2003]). Defendant met its prima facie burden of establishing its entitlement to judgment as a matter of law by presenting the deposition testimony of plaintiff, and Melanie Thomas and Kevin Kelly, two of the chaperones present at the dance. By said testimony, defendant demonstrated that the dance itself was adequately supervised: the guest policy was quite strict, each chaperone had a designated area to patrol, chaperones communicated with each other through cellular telephones or walkie-talkies, students were not permitted to enter and exit at their leisure, chaperones were instructed to be aware of altercations or students under the influence of drugs or alcohol, and that as soon as Guest 1 pushed plaintiff, both guests were immediately escorted out of the building. Defendant also presented evidence that it had no specific knowledge or notice that Guest 2 would attack plaintiff (see Ghaffari v N. Rockland Cent. School Dist., 23 AD3d 342 [2005]; Moody v New York City Bd. of Educ., 8 AD3d 639 [2004]). The testimony of both plaintiff and Ms. Thomas demonstrated that neither had any knowledge of the attacker's propensity for violence, nor an indication that a violent act would eventually be perpetrated by Guest 2 against plaintiff, as it was Guest 1 who initially physically confronted him (see e.g. Doe, 17 AD3d at 511; Doe, 8 AD3d at 611). Guest 2 had not exhibited any verbal or physical threats toward plaintiff during the dance, nor were any witnessed by Ms. Thomas or Mr. Kelly. Plaintiff also testified that he had not seen or known these individuals prior to the subject evening.

Furthermore, defendant demonstrated that, even if there was a breach of duty, said breach was not the proximate cause of plaintiff's injuries, as the attack was sudden and unforseen (see Swan, 32 AD3d at 1014). The attack could not have been reasonably anticipated based on evidence that (1) it was actually Guest 1 who exchanged presumably harsh words toward plaintiff; and (2) Guest 2 urged Guest 1 to be escorted out by the chaperones (see Morning v Riverhead Cent. School Dist., 27 AD3d 435 [2006]; In-Ho Yu v Korean Cent. Presbyt. Church of Queens, 303 AD2d 369 [2003]).

Plaintiff has failed to raise a triable issue of fact in opposition. Plaintiff does not present any evidence that defendant had any reason to anticipate that Guest 2 would violently attack

plaintiff (see Doe v Town of Hempstead Bd. of Educ., 18 AD3d 600 [2005]; Jimenez v City of New York, 292 AD2d 346 [2002]). Though it is uncontroverted that one of defendant's chaperones witnessed the physical encounter that occurred at the dance an hour before the attack, the argument that Guest 1's act of pushing plaintiff would then give defendant notice that Guest 2 would later slash plaintiff with a knife, is without merit. Plaintiff's only testimony with regard to Guest 2 was that Guest 2 actually urged Guest 1 to leave; a reasonable person would not then be put on notice that this individual would later commit a violent, spontaneous act (see Morning v Riverhead Cent. School Dist., 27 AD3d 435 [2006]; Malik v Greater Johnstown Enlarged School Dist., 248 AD2d 774 [1998]). Furthermore, there was no evidence presented to this court that defendant was aware of prior altercations between Guest 2 and plaintiff (see Convey v City of Rye School Dist., 271 AD2d 154 [2000]; Brown v Board of Educ. Of Glen Cove Public Schools, 267 AD2d 267 [1999]). In fact, in plaintiff's examination before trial, he testified that he had never seen either of the guests prior to the moment he first encountered them at the dance.

Moreover, even if evidence had been presented to show that defendant breached its duty to plaintiff, there is, nevertheless, no proof that said breach was the proximate cause of plaintiff's injuries as, by way of plaintiff's admission, the incident occurred in a short span of time (see Convey, 271 AD2d at 160).

Accordingly, defendant's motion for summary judgment to dismiss plaintiffs' complaint is hereby granted.

Dated: December 11, 2008

J.S.C.