

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1250

J
9/21
Jew ROBERT LEE ILES, III, INDIVIDUALLY AND ON BEHALF
OF HIS MINOR DAUGHTER, JANNAH ILES

VERSUS

ST. TAMMANY PARISH SCHOOL BOARD, DR. MICHAEL R.
PETERSON, DANIEL EITMAN, LYNETTE KENYON, LIONEL
HANLEY, JR. AND MICHELLE BERTRAM HANLEY

DATE OF JUDGMENT: MAR 06 2015

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 2013-10245, DIVISION G, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE SCOTT GARDNER, JUDGE

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

Plaintiff-appellant, Robert Lee Iles, individually and on behalf of his minor daughter Jannah Iles, appeals the trial court's judgment, granting a motion for summary judgment asserted by defendants-appellees, the Northshore High School Band Boosters, Inc. (the Boosters) and its insurer, Homeland Insurance Company of New York, as well as one filed by the St. Tammany Parish School Board (STPSB), dismissing these defendants from this lawsuit for which Iles claims damages as a result of injuries Jannah sustained while performing in the Northshore High School (NHS) color guard at a Martin Luther King (MLK) day parade in Slidell.¹ We affirm.

BACKGROUND

Iles filed this lawsuit on January 17, 2013, claiming entitlement to damages as a result of an injury his minor daughter Jannah sustained while she was marching as a member of the NHS color guard (flag corps) along with the band at the MLK parade in Slidell. Iles named as defendants STPSB, the principal, the band director, the color guard director, the Boosters and its insurer, and the parents of her fellow NHS color guard member, Gabrielle Hanley, averring that each bore responsibility for Jannah's damages. Insofar as the Boosters, Iles asserted that because it paid a salary to the color guard director, she was their agent, for which the Boosters are answerable. He likewise asserted that the STPSB was liable for the actions of its employees, including the band director. Collectively, Iles asserted, the Boosters and STPSB failed to properly train and supervise the student members of the color guard. He also alleged damages from these defendants for the failure of their agents to administer immediate medical care after Jannah sustained injury.

¹ Defendant, Lynette Kenyon, who served as the high school's color guard director, was also dismissed from this litigation by summary judgment in her individual capacity, but Isles has not appealed her dismissal.

The Boosters and its insurer and STPSB each moved for summary judgment, urging that Iles could not demonstrate either negligence or a causal connection between any alleged negligence and the injuries that Jannah sustained. After a hearing at which deposition evidence was adduced, the trial court agreed. A judgment, granting both motions for summary judgment and dismissing with prejudice Iles' claims against the Boosters, its insurer, and STPSB, was signed on April 4, 2014. Iles appeals.

DISCUSSION

Appellate courts review summary judgments *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate.

The burden of proof on a motion for summary judgment is on the movant. *Granada v. State Farm Mut. Ins. Co.*, 2014-2012 (La. App. 1st Cir. 2/10/06), 935 So.2d 698, 701. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to provide factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. C.C.P. art. 966(C)(2). A motion for summary judgment should be granted only if any pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B);

Creekbaum v. Livingston Parish School Bd., 2011-1089 (La. App. 1st Cir. 12/21/11), 80 So.3d 771, 773.

Insofar as Iles' claims that the Boosters and STPSB were liable to her for failing to train and supervise the color guard as it marched in the MLK parade, the defendants' liability is predicated on La. C.C. arts. 2315 and 2320, and the analysis is the same under both statutes as liability under each requires a breach of the duty of reasonable supervision over its students.

The band director and the color guard director have the duty to exercise his or her specific responsibilities in such a manner as to protect those under his or her charge from foreseeable harm; they do not insure the safety of those in his or her charge in all circumstances. See *Prejean v. East Baton Rouge Parish School Bd.*, 98-0063 (La. App. 1st Cir. 2/19/99), 729 So.2d 686, 688-89, writ denied, 99-0801 (La. 4/30/99), 743 So.2d 209. Potentially dangerous activities require supervision reasonably calculated to prevent injury to student; the reasonableness of the band director's or the color guard director's supervision is determined largely by the same factors used to determine the reasonableness of instruction and preparation. When an activity is potentially dangerous, a student should not be required to attempt such activity without first receiving proper instruction and preparation, including an explanation of basic rules and procedures, suggestions for proper performance, and identification of risks. Considerations in determining whether instructions are proper and sufficient include the difficulty and inherent dangerousness of the activity and the age and experience of the students. *Green v. Orleans Parish School Bd.*, 365 So.2d 834, 836 (La. App. 4th Cir. 1978), writ denied, 367 So.2d 393 (La. 1979).

A school board, through its agents and teachers, owes a duty of reasonable supervision over students. See La. C.C. art. 2320. The supervision required is reasonable, competent supervision appropriate to the age of the children and the

attendant circumstances. This duty does not make the school board the insurer of the safety of the children. Constant supervision of all students is not possible or required for educators to discharge their duty to provide adequate supervision.

Wallmuth v. Rapides Parish School Bd., 2001-1779 (La. 4/3/02), 813 So.2d 341, 346

The causation element is satisfied if it is proven that the breach was the cause-in-fact of the plaintiff's injuries. In a breach of proper training and instruction case, the cause-in-fact element can only be satisfied if it is proven that "but for" the lack of reasonableness of instruction and preparation plaintiff's injuries would have been prevented. See *Granger v. Christus Health Central Louisiana*, 2012-1892 (La. 6/28/13), 144 So.3d 736, 766. Similarly, in a breach of supervision case this can only be satisfied if it is proven that "but for" the lack of reasonable supervision, plaintiff's injuries would have been prevented. See *Wallmuth*, 813 So.2d at 346.

Jannah testified that she had joined the color guard her sophomore year at NHS. Prior to the MLK parade, she had attended a two-week band camp in the summer, practiced for two hours twice or three times weekly after school, and had worked alongside her color guard teammates in a daily one-hour class. Thus, she had received between nine and ten hours instruction each week she was in the color guard. Additionally, Jannah had participated with the color guard at all the home and several on-the-road football games, a statewide competition, and other events. Jannah indicated that synchronization, spacing when marching, and proper control of the flag poles were emphasized whenever the color guard practiced. She stated that the six-foot flagpole she was using at the MLK parade was the primary instrument she used in practices, and that she had performed the actual routines used at the MLK parade during class and at practices before participating, she just had not marched on the actual parade route. According to Jannah, the MLK parade

was her first time performing with the color guard on the roadway and she felt that the narrowness of the streets made it difficult to do the routine they had been assigned without hurting each other. But she admitted that color guard director had, from the first day of camp, stressed the importance of spacing and had educated the color guard members to maintain their spacing among each other at performances. Jannah recounted that, before their performance, the color guard team had practiced together in a small parking lot at the beginning of the parade and that the routine was much less difficult than those the color guard had performed for football games and the statewide competition. She also described that in the daily classes and after-school practices immediately preceding the parade, the color guard went over the routines again.

Jannah candidly acknowledged that she had a limited memory of the events immediately before and following her injury. She recalled her color guard teammate immediately next to her; but she did not remember who was behind her and who was in front of her. She did not see what happened to her. She heard a flagpole strike her head and she blacked out. Jannah explained that in the past she had heard a flagpole hit the ground, and when she was struck, "it sounded the same." After she fell, Jannah had "like a dent" on the top of her head but no scratches or bleeding. She knows that she fell because she remembered someone having picked her up when she regain full consciousness.

Jannah said that she learned that Gabrielle Hanley was the teammate who hit her when she asked other teammates and someone (whose name she could not remember but who she identified as a cousin to someone she knew) told Jannah it was Gabrielle. Jannah also stated that she received a Facebook message from Gabrielle a couple weeks after the parade, apologizing for having hit her. She did not know where in the formation Gabrielle was located. Jannah testified that had Gabrielle adhered to the standard the color guard members had been taught, she

would not have hit Jannah's head. Jannah conceded that the Facebook message, which was not admitted into evidence, and the memory of a member of the band, who she believed had witnessed the incident but whose testimony was not provided, were the only evidence she had of what had happened to make her fall.

Gabrielle Haney's deposition testimony was also admitted into evidence. She testified in conformity with Jannah about the specifics of the instruction the color guard had received, the number of hours the team had practiced together, and that prior to the event, the team had gone over the routines that were to be performed in the parade during their daily classes. According to Gabrielle, she felt prepared for the MLK parade performance.

As the color guard marched, Gabrielle recalled that she was located one row ahead to the right of Jannah in the two-person, fifteen-row formation. She explained that the routine required the members to switch places. As Gabrielle switched, she heard her flagpole collide with Jannah's and when she turned around, Jannah was on the ground. Gabrielle stated, "[Jannah] was hit and my shoulder was hit." Gabrielle was not sure what had happened because Jannah was behind her and she did not see the event. She stated that there was plenty of space and, if each member kept on time, the routine should have been performed fluently. Gabrielle opined that perhaps Jannah had tripped and fallen into Gabrielle. Gabrielle remembered that when she heard the flagpoles make contact, she was executing a forward motion portion of the routine. Gabrielle was not sure that she struck Jannah in the head with her flagpole, and suggested that Jannah may have struck herself with her own flagpole.

The deposition testimony of the color guard director and the band director was also introduced into evidence. Neither witnessed the event. Their collective testimony was in conformity with that of Jannah and Gabrielle regarding the

quality and quantity of instruction and preparation the members of the color guard received prior to the MLK parade performance.

With this evidence, the Boosters, its insurer, and STPSB pointed out an absence of factual support for Iles' claim in that there is no evidence to support a causal connection between Jannah's injuries and a breach of the duty to train and instruct the color guard for the MLK parade that was owed by the color guard director (an agent of the Boosters) and the band director (an employee of STPSB). While Iles argued that the failure to have had the color guard march the actual parade route prior to the MLK event is unreasonable, the evidence was undisputed that the routine performed on January 16, 2012, was simpler than other routines and that the team had performed it multiple times before. Indeed, believing that Gabrielle had struck her with her flagpole, Jannah testified that had Gabrielle adhered to the standard the team had been taught, she would not have hit her. The record is devoid of any evidence to support a finding that "but for" the lack of reasonableness of training and instruction, Jannah's injuries would have been prevented.² Thus, the trial court correctly granted summary judgment to the Boosters, its insurer, and STSPB on this basis.

Likewise, STPSB used this same evidence to point out an absence of factual support for Iles' claim in that there is no evidence to support a causal connection between a breach of the duty to supervise the students at the MLK event and Jannah's injuries. The evidence was undisputed that there were multiple parent volunteer chaperones who marched alongside the color guard and the band throughout the parade, creating a barrier between the participants and the crowd.

² At oral argument, Iles asserted that he believed a potential witness of the events as they unfolded when Jannah fell to the ground was a student teacher and complained it was error for the trial court to grant summary judgment since STPSB had failed to provide Iles with the student teacher's contact information. At his October 1, 2013, deposition, the band director specifically identified the individual by name as a student at Loyola University who interned for about two weeks. The record contains nothing to support any efforts by Iles after October 1, 2013 to engage in discovery so as to ascertain the whereabouts of the individual. As such, we find no merit in this complaint.

The undisputed evidence was that when Jannah fell, the parent chaperones responded quickly as she was removed from the parade and walked her to the back where she was placed inside a vehicle driven by a parent. The parent allowed Jannah to call her parents from his phone at the request of the color guard director who walked to the back of the parade to check on Jannah shortly after the fall. Because Iles was unable to establish the mechanics of the accident, i.e., exactly what caused Jannah to sustain an injury to her head and fall to the ground, the record is simply devoid of any evidence connecting any lack of reasonable supervision by the STPSB to the prevention of Jannah's injuries. As such, the trial court correctly granted summary judgment on this basis.

Lastly, we find no merit in Iles' contention that the failure of the color guard or the band director to administer immediate medical treatment further contributed to Jannah's injuries. The undisputed evidence was that the color guard director checked in on Jannah shortly after the incident. While the band and color guard directors may have a duty to enable a student/color guard member to access medical treatment when she presents a persistent medical complaint, see Jarreau v. Orleans Parish School Bd., 600 So.2d 1389, 1393 (La. App. 4th Cir.), writ denied, 605 So.2d 1378 (La. 1992), Iles offered no evidence that Jannah made any complaints of symptoms warranting medical attention. Jannah testified that she had been unable to contact her mother when she phoned her from the back of the vehicle she was placed in so she stayed there until she returned back to NHS. She stated that she felt dizzy, dazed, confused, and that her head hurt. After the parade, she and her friend ate chips and a sandwich. She went home that evening and although was unable to sleep, Jannah testified that it was over 24 hours before her "symptoms really started to start." From the time she returned to NHS until she sought medical care, Jannah was in the care and custody of her parents. This showing is woefully short to sustain a finding that either the color guard director or

the band director had a duty to administer immediate medical treatment or that a breach of that duty further contributed to Jannah's injuries.

Accordingly, because the Boosters, its insurer, and STPSB have pointed out an absence of factual support for one or more elements essential to Iles' claim, the trial court correctly granted summary judgment.

DECREE

For all these reasons, the trial court's judgment is affirmed. Appeal costs are assessed against plaintiff-appellant, Robert Lee Iles, individually and on behalf of his minor daughter Jannah Iles.

AFFIRMED.