

STATE OF MICHIGAN
COURT OF APPEALS

MARY GRAHAM, Next Friend of FAREED
GRAHAM,

UNPUBLISHED
December 8, 1998

Plaintiff-Appellant,

v

No. 204058
Wayne Circuit Court
LC No. 96-629538 NZ

PATRICIA DEMPZ,

Defendant,

and

BOBBY WHITEHEAD,

Defendant-Appellee.

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

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).

This case arises from a violent altercation between students in Law Elementary School in Detroit, raising the question of the extent to which the school's principal, defendant Bobby Whitehead,¹ may be liable to one of the students, Fareed Graham, for injuries resulting from that altercation.

In the proceeding below, defendant moved to dismiss, on grounds of both governmental immunity, MCR 2.116(C)(7), and that no question of material fact existed for resolution at trial, MCR 2.116(C)(10). Although the trial court expressly granted the motion under (C)(10) and not (C)(7), it is apparent from the record that the court recognized that defendant came under governmental immunity, having entertained the (C)(10) motion in light of plaintiffs' need to present evidence of something more than ordinary negligence.

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).

In ordinary actions concerning 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 result from "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, where that relationship exists between the defendant 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; 288 NW2d 609 (1979). Although we would not hold a school principal to any lesser duty, we decline plaintiff's invitation to rule that principals have the vastly greater duty to act as insurers of each student's safety against the possibility of another student's violence.

This Court has held that where there is no allegation that a teacher was present when a student was injured, no breach of the teacher's duty has been set forth. *Id.* Similarly, in this case, because plaintiff does not allege that defendant was present, or obliged to be present, when Fareed was attacked, plaintiffs' allegations are not legally sufficient to support a finding that defendant breached any duty he had to Fareed. Further, there is no dispute that defendant responded to reports of the offender's misconduct with suspensions and other actions. Defendant certainly satisfied any duty he had to try to maintain a safe school for all students. Defendant's knowledge that the offender had a long record of disciplinary problems and violent behavior did not render defendant strictly liable for that offender's continuing misbehavior. Plaintiff's allegations fail to make out a prima facie case of ordinary negligence on defendant's part, let alone

the gross negligence required to overcome governmental immunity. For these reasons, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael J. Talbot

¹ Pursuant to the parties' stipulation, this Court issued an order dismissing defendant Dempz on appeal on April 15, 1998. In this opinion, the term "defendant" will refer exclusively to Whitehead.