STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1769

Phillip Ransom, individually
and as father and natural guardian
of Jeremiah Ransom, a minor,
Plaintiff,

vs.

Bethany Academy,
Respondent,

Brenton Glover,
Appellant.

Filed August 12, 2008
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-CV-06-12673

Mark A. Pilney, Amanda J.G. Karls, Reding & Pilney, 8661 Eagle Point Boulevard, Lake Elmo, MN 55042 (for appellant)

Stephen O. Plunkett, Bassford & Remele, 33 South Sixth Street, Suite 3800, Minneapolis, MN 55402 (for respondent)

Considered and decided by Wright, Presiding Judge; Klaphake, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

In this appeal from summary judgment in a negligence action, appellant argues that respondent owed a duty to protect against the injury that occurred and that there are genuine issues of material fact as to proximate cause. We affirm.

FACTS

After classes had ended for the day on December 12, 2005, at respondent Bethany Academy (the school), appellant Brenton Glover and several other students were playing in the gymnasium while waiting for basketball practice to start. Glover was a senior and a member of the school's varsity basketball team. Glover and a teammate found a small rubber football in the gymnasium and began playing catch with it. After approximately five minutes, Glover decided to throw the football at another student as a joke. He spoke with four other basketball players in the area for approximately 30 seconds to one minute, during which they decided at whom Glover would throw the ball. Glover then threw the ball across the gymnasium, aiming at another basketball player who had his back turned. But Phillip Ransom, a freshman who played on the school's junior varsity basketball team, inadvertently walked into the path of the ball. The ball struck Ransom in the eye, causing an injury.

The school's junior varsity basketball coach, James Warren, was in the gymnasium during the incident. When Glover threw the football, Warren was working individually with one of the basketball players and had his back turned to Glover and Ransom. Consequently, he did not see the incident. The school's superintendent also

was in the vicinity that afternoon, supervising the gymnasium and the school's foyer. But he was not in the gymnasium when Ransom was struck by the football.

In June 2006, Ransom initiated a negligence action against Glover and the school. Glover and the school subsequently initiated cross-claims against each other. The school moved for summary judgment, which the district court granted with respect to all claims. Glover appealed.

D E C I S I O N

On appeal from summary judgment, we determine whether genuine issues of material fact exist and whether the district court erred as a matter of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We will affirm a district court's grant of summary judgment if it can be sustained on any ground. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

Summary judgment is appropriate when the nonmoving party bears the burden of proof and fails to establish the existence of an element essential to its case, *Bersch v. Rgnonti & Assocs., Inc.*, 584 N.W.2d 783, 786 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998), or when "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). When the record lacks proof of any essential element of a claim, the moving party is entitled to summary judgment. *Hous. & Redev. Auth. v. Lambrecht*, 663 N.W.2d 541, 547 (Minn. 2003).

To prevail on a negligence claim, the plaintiff must demonstrate that (1) the defendant owed the plaintiff a legal duty; (2) the defendant breached that duty; (3) the plaintiff suffered an injury; and (4) the defendant's breach was the proximate cause of the plaintiff's injury. *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). The primary disputed issue is whether the school had a legal duty to protect Ransom from Glover's actions.

The existence of a legal duty generally presents a question of law, which we review de novo. *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). A school is required to exercise ordinary care to prevent harm to a student by the foreseeable misconduct of other students. *Sheehan v. St. Peter's Catholic Sch.*, 291 Minn. 1, 5, 188 N.W.2d 868, 870-71 (1971). A school is liable for "sudden, foreseeable [student] misconduct which probably could have been prevented by the exercise of ordinary care." *Raleigh v. Indep. Sch. Dist. No. 625*, 275 N.W.2d 572, 576 (Minn. 1978).

But although foreseeability creates a duty of ordinary care, *id.*, the Minnesota Supreme Court has recognized that there are limits to foreseeability. "A teacher, generally, is not required to anticipate the hundreds of unexpected student acts which occur daily or to guard against dangers inherent in rash student acts." *Verhel v. Indep. Sch. Dist. No. 709*, 359 N.W.2d 579, 586 (Minn. 1984). Accordingly, a school has no legal duty to prevent harm to its students caused by unforeseeable student misconduct. *See Bjerke*, 742 N.W.2d at 667 (stating that legal duty may be imposed only if an injury is foreseeable); *see also Raleigh*, 275 N.W.2d at 576 (observing that school "might not be liable for sudden, unanticipated misconduct of fellow students").

Glover argues that, because Ransom's injury was foreseeable, the district court erred in concluding that the school did not have a duty to protect Ransom from the harm caused by Gover's misconduct. The following facts are undisputed: (1) Glover was using a small rubber football to play catch with a teammate before the injury; (2) Glover had never before thrown a football across the gymnasium; (3) Glover was not a student from whom the school had reason to expect the type of intentional misconduct that occurred; (4) before Glover threw the football across the gymnasium, he spoke with four nearby teammates for approximately 30 seconds to one minute about his intention of doing so; (5) Glover gave no warning to anyone else in the vicinity when he threw the ball; and (6) Ransom walked into the path of the football and was unaware of the football until immediately before it hit him. In sum, the undisputed evidence demonstrates that Glover acted on the spur of the moment, without leading anyone, except a few nearby teammates, to believe that he intended to throw the ball in the manner that he did.

Glover also argues that there are material-fact questions regarding foreseeability and purports to identify three facts demonstrating foreseeability. Glover first suggests that the injury was foreseeable because the school was aware of previous "injuries associated with horseplay" during the period between the end of classes and the beginning of basketball practice. Glover relies on Warren's deposition testimony:

> Q. In that time period . . . after school gets out and before practice begins, that time period, prior to December 12th of '05, had there ever been any injuries that were associated with horseplay during that time period?
>
> A. Had there ever been? [Brief pause.] I would say yes, as long as you didn't ask me specifics, because I couldn't list for

> you any specifics, certainly nothing where there were lawyers involved. But I would be extremely surprised if there had been none.

Even when viewing Warren's testimony in the light most favorable to Glover, the testimony suggests merely that some type of injury or injuries occurred during the after-school period. But this testimony does not clarify any of the circumstances of those injuries to demonstrate their relevance to the foreseeability issue here. Although the school need not have foreseen the specific injury that occurred, the record supplies no reason to believe that an injury occurring at some unspecified location under unspecified conditions would make "clear to the person of ordinary prudence" that a subsequent accident was likely to occur. *See Bjerke*, 742 N.W.2d at 667 (quotation omitted) (describing degree of specificity required for an injury to be considered foreseeable). Therefore, Warren's testimony does not create a question of material fact regarding foreseeability of the accident here.

Glover next argues that, when the injury occurred, "there was a situation in the gymnasium in which there were likely more than 25 high-school-age students taking half-court and full-court shots and throwing balls around in a manner that caused students to be at a heightened state of awareness." But the evidence that Glover identifies merely establishes that, in general, "[a] lot of kids" took long-range basketball shots during that time period, causing students in the gymnasium to be alert for basketballs being thrown around. Glover does not identify any evidence that this was in fact the state of the gymnasium when the injury occurred, and no such evidence is readily discernible from the record. Rather, the evidence establishes that, when Ransom was injured, there were

only 20 to 25 students in the gymnasium, all of whom were members of the school's basketball teams. And there is no evidence suggesting that any of those students were shooting the long-range shots that Ransom described. Finally, Ransom acknowledged that, typically, he had to be "a little bit alert for balls" when he was "under the basket." But Ransom was not under the basket at the time of the injury.

Glover also argues that his brief discussion with teammates before throwing the ball made the injury foreseeable to the school because "it certainly may have been possible for a school official, if [one] had been watching, to determine that Glover and his friends were not focused on preparing for basketball practice." But Glover does not identify any record evidence supporting an inference that the conversation among the students would lead an observer to believe an injury was likely to result. Indeed, a conversation as brief as the one described in the record, without further evidence, does not reasonably support an inference that the students were not preparing for basketball practice.

The dearth of any evidence in the record supporting a genuine issue of material fact regarding foreseeability permitted the district court to decide the issue of duty as a matter of law. On this record, the district court correctly concluded that Glover's throw was "exactly the type of sudden and unanticipated action against which a school has no duty to guard because it was not foreseeable."[1]

Affirmed.

[1] Because we affirm the district court's decision that the school did not have a legal duty to prevent the injury at issue here, we decline to address Glover's argument regarding proximate cause.