

STATE OF MICHIGAN
COURT OF APPEALS

MAURISA DANIELS, Next Friend of JASON
DANIELS, a Minor,

UNPUBLISHED
April 29, 2003

Plaintiff-Appellant,

v

NEW ST. PAUL TABERNACLE CHURCH OF
GOD IN CHRIST,

No. 238928
Wayne Circuit Court
LC No. 00-038436-NO

Defendant-Appellee.

Before: Griffin, P.J., and Neff and Gage, JJ.

GRIFFIN, P.J. (*dissenting*).

I respectfully dissent. I would affirm the dismissal of this frivolous action.

While the issue of negligence is usually a question for the trier of fact, summary disposition is warranted when reasonable minds could not differ on the evidence presented. *Jackson v Saginaw Co*, 458 Mich 141; 580 NW2d 870 (1998), *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). The same standard applies to the issue of proximate cause. *Skinner v Square D Co*, 445 Mich 153; 516 NW2d 473 (1994); *Vsetula v Whitmyer*, 187 Mich App 675, 682; 468 NW2d 53 (1991).

In the present case, plaintiff failed to sustain her burden of submitting documentary evidence from which reasonable minds could conclude that defendant's conduct was negligent.¹ MCR 2.116(G)(4). *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). Here, three adults were supervising fifteen children at the time of the accident. The ratio required by the Michigan Department of Consumer and Industry Services is one caregiver present for every ten children. As noted by the circuit judge, the child's sudden and unexpected action of losing his grasp of the monkey bars was a true accident:

The child fell off the playground equipment owned by the church. There's
no allegation of any defect in the equipment. This is an accident. The incident

¹ Plaintiff has abandoned her claim of attractive nuisance. Jason was allowed to use the monkey bars, which were approved Head Start equipment.

did not occur as a result of any negligence of any individual, so Defendant's motion is hereby granted.

I agree.

In addition, plaintiff's injury was not a cause in fact of defendant's conduct because greater supervision would not have prevented Jason from losing his grasp of the monkey bars.² *Skinner, supra*, and *Brisboy v Fibreboard Corp*, 429 Mich 540, 547; 418 NW2d 650 (1988). As explained by our Supreme Court in *Brisboy*, "When a number of factors contribute to produce an injury, one actor's negligence will not be considered a proximate cause of the harm unless it was a *substantial factor* in producing the injury." *Id.* at 547 (emphasis added). The "substantial factor" test for causation in fact requires a causal connection greater than "but for." *Derbeck v Ward*, 178 Mich App 38; 443 NW2d 812 (1989). Under these circumstances, reasonable minds could not differ on the issues of negligence and proximate cause and therefore summary disposition was properly granted in favor of defendant.

I would affirm.

/s/ Richard Allen Griffin

² Plaintiff does not argue that defendant's employees owed a duty to catch Jason as he fell.