

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

CHRISTINE DAZLE , individually and on behalf) of the minor, CIARRA DAZLE ,) Plaintiff,) vs.) THE CHURCH OF GOD OF PROPHECY) FOR THE VIRGIN ISLANDS, INC. d/b/a) PROPHECY ELEMENTARY & MIDDLE) SCHOOL and C.O.G. PROPHECY ACADEMY,) INC. d/b/a C.O.G. ACADEMY, INC.) Defendants.) _____)	CIVIL NO. ST-09-CV-343 ACTION FOR DAMAGES JURY TRIAL DEMANDED
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MEMORANDUM OPINION

Plaintiff Christine Dazle¹ has moved for partial summary judgment on the issue of liability. She requests that the Court adjudge Defendants liable for the injuries caused to her daughter when an iron gate or iron guardrail² fell on her at school. Because Dazle has not provided sufficient facts to show that the Defendants knew, or by the exercise of reasonable care should have known, that the gate presented a dangerous condition, the Court will deny the Motion for Partial Summary Judgment.

FACTS

The Court will recite the facts as provided by Dazle in her Motion because, as discussed below, Defendants have failed to contest them. Defendant Church of God of Prophecy for the Virgin Islands ("Church of God") and Defendant C.O.G. Prophecy Academy ("Prophecy Academy") jointly operate a private school on St. Thomas. Ciarra Dazle ("Ciarra"), Plaintiff's daughter, was enrolled as a student in Pre-Kindergarten at Prophecy Academy. On April 16, 2008, Ciarra and her classmates were climbing an iron gate or guardrail on the Academy premises and it fell on top of her, causing injuries.

According to the affidavits provided in support of the Motion, at the time of the accident Patricia Robb was Acting Principal. Though she knew there was an iron gate on the premises, she did not inspect it. Bishop Kenneth Benjamin was the Administrator of Prophecy Academy until 2007 and left before the accident. He removed vending machines that had existed behind the iron gate, but did not remove the gate. He states that Ms. Robb told him to remove the machines but Ms. Robb counters that the vending machines were removed before she became Acting Principal.

¹ Dazle is represented in this action by George Hodge Jr., Esq. Defendants are represented by Amos Carty, Esq.

² Dazle alternatively refers to the structure as an "iron gate" or "iron guardrail." Throughout this memorandum, the iron gate or iron guardrail will simply be referred to as "the iron gate" or "the gate."

DISCUSSION

I. EFFECT OF DEFENDANTS' FAILURE TO OPPOSE THE MOTION FOR PARTIAL SUMMARY JUDGMENT.

Defendants filed a "Motion in Opposition" to Dazle's Motion for Partial Summary Judgment on February 1, 2011. By Order dated February 16, 2011, the Court rejected the Opposition because it did not comply with LRCi. 56.1.³ The Court directed Defendants to file their renewed response within fourteen (14) days of entry of the Order. The Order was entered on February 18, 2011, so a response was due by March 4, 2011. Defendants have not filed that response.

Rule 56.1 of the Local Rules of Civil Procedure states that a party's failure to respond to a statement of material facts "may result in a finding that the asserted facts are not disputed for the purposes of summary judgment." It does not, however, state that, in light of such failure, the Court must grant the Motion for Summary Judgment. The Court of Appeals for the Third Circuit has stated that a grant of summary judgment should not be used as a sanction and that such a grant must be based on the merits of the action.⁴ As both *Anchorage Assoc.* and *Jarrett* conclude, it is not enough that a party might concede there is no dispute as to material facts. The Court must also examine the law to determine whether the movant is entitled to judgment on the merits. Rule 56 of the Federal Rules of Civil Procedure also supports this conclusion. Subsection (e)(2) states that when a party does not respond to a Motion for Summary Judgment, "summary judgment should, *if appropriate*, be entered against that party."⁵ Therefore, while the Court will find that the facts asserted by Dazle are not disputed, an entry of summary judgment should not be automatic but should be entered only if it is merited.

II. THE UNDISPUTED FACTS ASSERTED BY DAZLE ARE NOT SUFFICIENT TO FIND THAT SHE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE CLAIM OF NEGLIGENCE.

A. Summary Judgment Standard.

Summary judgment is appropriate where the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."⁶ First, the Court must determine whether there is any genuine issue of material fact.⁷ The mere existence of an alleged factual dispute as to an immaterial issue will not defeat an otherwise properly supported motion for summary

³ The Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of the District Court of the Virgin Islands apply to matters before this Court whenever they are not inconsistent with the Rules of the Superior Court. SUPER. CT. R. 7.

⁴ *Anchorage Assoc. v. VI Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990) (cited in *GRS Dev. Co. v. Jarrett*, Civ. No. 596/2001, 2003 WL 21134437 (Terr. Ct. April 10, 2003)).

⁵ FED. R. CIV. P. 56(e)(2) (emphasis added).

⁶ FED. R. CIV. P. 56(c)(2).

⁷ See *Skopbank v. Allen-Williams Corp.*, 39 V.I. 220, 227 (D.V.I. 1998).

judgment.⁸ A fact is material only if its existence or non-existence will affect the outcome of a lawsuit under applicable law, and a dispute over a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.⁹ If there is no genuine issue of material fact, the Court must then determine whether the movant is entitled to judgment on the merits.¹⁰

The role of the Court is not to weigh the evidence for its truth or credibility, but merely to ascertain whether a triable issue of fact remains in dispute,¹¹ and, if not, who ought to succeed on the merits. The nonmoving party receives “the benefit of all reasonable doubts and inferences drawn from the underlying facts.”¹² “Summary judgment, an extreme remedy, cannot be entered unless the movant has established its rights to a judgment with such clarity as to leave no room for controversy, and the other party is not entitled to recover under discernible circumstances.”¹³ However, summary judgment “may be granted if it appears from the record, after viewing all the evidence and factual inferences in the light most favorable to the non-moving party, that the moving party is entitled to judgment as a matter of law.”¹⁴

B. Dazle Has The Burden of Proving Each and Every Element of Negligence.

Dazle has the burden of proving each and every element of the claim of negligence. To succeed on her claim, she must prove that Defendants owed her daughter a duty, that they breached that duty, that the breach of that duty was the cause of some injury, and that her daughter suffered that injury.¹⁵

Dazle has failed to establish sufficient facts to show that Defendants breached their duty to her daughter. Students are considered invitees¹⁶ to whom schools owe a duty of reasonable care.¹⁷ A school, like all possessors of land, may be liable to invitees if it:

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.¹⁸

⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

⁹ *Id.*

¹⁰ *Anchorage Assoc. v. VI Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990).

¹¹ *Suid v. Phoenix Fire & Marine Ins. Co., Ltd.*, 26 V.I. 223, 225 (D.V.I. 1991).

¹² *Aristide v. United Dominion Constructors, Inc.*, 30 V.I. 224, 226 (D.V.I. 1994) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

¹³ *Battle v. Industrious*, 26 V.I. 83, 85 (Terr. Ct. 1991).

¹⁴ *Id.*

¹⁵ See *Mill Harbour Condo. Owner's Assoc. v. Marshall*, S.Ct. Civ. No. 2008-0085, 2010 WL 1848476, at *2 (V.I. May 6, 2010) (citing Restatement (Second) of Torts § 281 (1965)).

¹⁶ Allan E. Korpela, LL.B., Annotation, *Tort Liability of Private Schools and Institutions of Higher Learning for Accidents Due to Condition of Buildings, Equipment, or Outside Premises*, 35 A.L.R.3d 975 (1971).

¹⁷ *Id.*

¹⁸ Restatement (Second) of Torts § 343 (1965).

In this case, Dazle alleges in her First Amended Complaint that "Defendants knew of the dangerous condition for months." However, she provides no evidence of this alleged knowledge. In her Statement of Undisputed Facts, she states that Acting Principal "knew of the vacant iron cage long before [the date of the accident] but failed to inspect the iron gate to safeguard the safety of the children." The Acting Principal states in her affidavit that the vending machines were removed "way before" she became Acting Principal, and that she did not inspect the gate to see if it was secured to the ground. However, this does not support Dazle's contention that Defendants actually knew the gate was not secured to the ground.

In contrast to her First Amended Complaint, Dazle's Motion argues not that the Defendants had actual knowledge, but that they had "constructive notice of the dangerous condition." However, the facts provided in the affidavits in support of the Motion do not support this conclusion and, in fact, are contradictory.

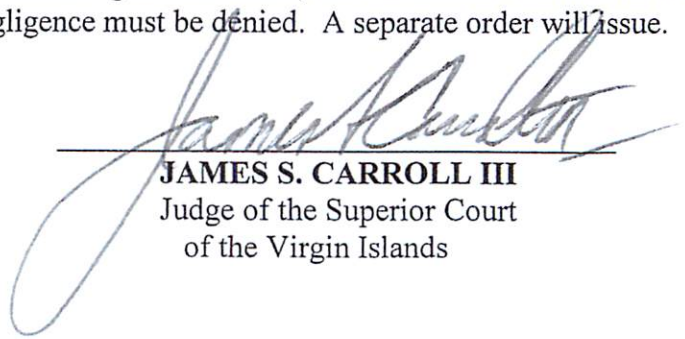
According to Ms. Robb, the vending machines were removed "way before" she became Acting Principal. However, Bishop Kenneth Benjamin states that he was Administrator from 1985 to 2007 and that, during his tenure, Ms. Robb was Acting Principal. In contradiction to Ms. Robb's affidavit, he states that she told him to remove the soda machine from the premises. Therefore, these statements lead to confusion about how long the gate was in place without any vending machine.

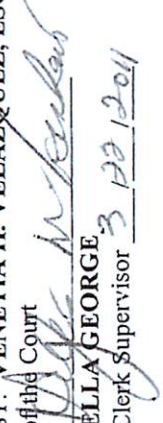
Even more importantly, while Dazle presents contradictory evidence regarding how long the gate was on the premises after the vending machine was removed, she provides no evidence regarding how long the gate was loose. The dangerous condition is not that there was no vending machine; but the fact that the gate was not secured to the ground. Dazle must prove that, had Defendants been exercising reasonable care, they would have discovered that the dangerous condition. The Court does not have enough evidence to determine how long the gate was loose and, therefore, cannot determine whether it would have been unreasonable for Defendants not to discover this condition.¹⁹

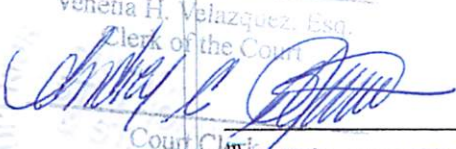
CONCLUSION

Because Dazle has failed to provide sufficient evidence that Defendants, in the exercise of reasonable care, should have discovered that the gate was loose, her Motion for Partial Summary Judgment on the issue of liability for negligence must be denied. A separate order will issue.

DATED: March 21, 2011


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court
BY: 
ESTRELLA GEORGE
Court Clerk Supervisor 3 22 2011

CRIMINAL
Date: 3/22/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

¹⁹Korpela, *supra* note 14 ("[I]t is necessary to introduce sufficient proof by either direct or circumstantial evidence that the condition existed a sufficient length of time prior to injury so that in the exercise of ordinary care, the school would have discovered it and either remedied it or given fair, adequate warning with respect thereto.").

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ORDER

AND NOW, consistent with the findings and conclusions of the Memorandum Opinion issued today in this case, it is hereby

ORDERED that Plaintiff Christine Dazle's November 24, 2010 Motion for Partial Summary Judgment is **DENIED**; and it is further

ORDERED that copies of this Order shall be directed to counsel of record.

DATED: March 21, 2011

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court
BY:

ESTRELLA GEORGE
Court Clerk Supervisor 3/27/2011

JAMES S. CARROLL III
JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

CERTIFIED A TRUE COPY

Date: 3/29/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By: ANDREW C. GIBSON
Court Clerk