

903 N.Y.S.2d 21
Supreme Court, Appellate Division, First
Department, New York.

April ZIMMERMAN, et al., Plaintiffs-Respondents,
v.
The CITY OF NEW YORK, et al.,
Defendants-Appellants.

June 1, 2010.

Synopsis

Background: School psychologist brought action against city and related defendants for personal injuries sustained during an altercation between two students. After jury trial, the Supreme Court, Bronx County, [George D. Salerno, J.](#), 21 Misc.3d 1146(A), 880 N.Y.S.2d 228, granted psychologist's motion to set aside jury verdict as to damages, and denied defendants' cross motion to set aside verdict as to liability and damages. Defendants appealed.

Holding: The Supreme Court, Appellate Division, held that psychologist did not have "special relationship" with municipality, as was required to establish affirmative duty on part of municipality to protect psychologist during altercation.

Reversed.

Attorneys and Law Firms

****21** [Michael A. Cardozo](#), Corporation Counsel, New York ([Tahirih M. Sadrieh](#) of counsel), for appellants.
[Seligson, Rothman & Rothman](#), New York ([Martin S. Rothman](#) of counsel), for respondents.

[MAZZARELLI, J.P.](#), [McGUIRE](#), [DeGRASSE](#),
[FREEDMAN](#), [RICHTER](#), JJ.

Opinion

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***439** Order, Supreme Court, Bronx County (George D. Salerno, J.), entered on or about November 5, 2008, which granted plaintiffs' post-trial motion to set aside a jury verdict as to damages, and denied defendants' cross motion to set aside the verdict as to liability and damages, unanimously reversed, on the law, without costs, the cross motion granted, and the complaint dismissed. The clerk is directed to enter judgment accordingly.

In this action for personal injury sustained by a school psychologist during an altercation between two students, plaintiffs failed to allege or prove the existence of a special relationship that would establish an affirmative duty on defendants' part toward the injured party (*see Cuffy v. New York*, 69 N.Y.2d 255, 260-261, 513 N.Y.S.2d 372, 505 N.E.2d 937 [1987]). There was no evidence that the Board of Education had undertaken any specific security measures for plaintiff Zimmerman's exclusive benefit beyond the general security ****22** for which it was responsible (*see Vitale v. City of New York*, 60 N.Y.2d 861, 470 N.Y.S.2d 358, 458 N.E.2d 817 [1983]), or that Zimmerman justifiably relied on any security measures or other assurances so as to lull her into a false sense of security or a belief that such measures were specifically intended for her exclusive benefit (*see Buder v. City of New York*, 43 A.D.3d 720, 843 N.Y.S.2d 206 [2007]; *see also Dinardo v. City of New York*, 13 N.Y.3d 872, 893 N.Y.S.2d 818, 921 N.E.2d 585 [2009]). Plaintiffs demonstrated no direct contact with agents of the Board of Education regarding such security measures or the incident leading to her injuries that might have created such a special relationship (*see e.g. Laratro v. City of New York*, 8 N.Y.3d 79, 828 N.Y.S.2d 280, 861 N.E.2d 95 [2006]). Nor did she demonstrate that any such contacts in general might have alerted the Board to the need for enhanced protection under the circumstances (*see e.g. Euell v. Incorporated Vil. of Hempstead*, 57 A.D.3d 837, 871 N.Y.S.2d 224 [2008]).

Parallel Citations

74 A.D.3d 439, 258 Ed. Law Rep. 351, 2010 N.Y. Slip Op. 04654

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