

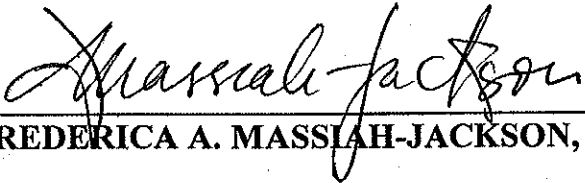
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Samson Kolee, A Minor, by and through his	:	
P/N/G Cecilia W. Nelson Boldoe	:	
Plaintiffs	:	August Term, 2016
	:	
vs.	:	No. 4028
	:	
School District of Philadelphia	:	
Defendant	:	

ORDER

And Now, this *28th* day of March, 2018, after considering the Motion for Summary Judgment filed by the School District of Philadelphia and Plaintiffs' Response thereto, and for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that the Defendant's Motion is **DENIED** in its entirety.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.

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MAR 28 2018
J. EVERS
DAY FORWARD

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School District of Philadelphia	:	
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**MEMORANDUM in SUPPORT OF ORDER DENYING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

MASSIAH-JACKSON, J.

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I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

On November 17, 2015, Samson Kolee was 5 years old. He attended Kindergarten at Pollock Elementary School in Philadelphia. Samson and his classmates were coming in from recess, walked up a stairway and were going through a doorway into the hallway. Ms. Cynthia Wyche, a classroom assistant, described the incident at her deposition taken September 14, 2017:

“N.T. 17: ‘Okay. I was coming up the stairs from recess. I went through the door that is usually propped open, the one closest to the office. I didn’t see the kids there when I opened the door. I was waiting for the door to close when I turned my head. The next thing I hear is a scream or a cry, I turned my head back and it was Samson crying. I looked down and his finger was bleeding. I grabbed him and ran to the nurse. I ran water over it for a few minutes. I put a napkin to help stop the bleeding, then the nurse said let me see it. I took the tissue off is when we saw his finger.’”

“N.T. 32-33: ‘It’s a metal door It’s a metal door and they’re kindergartners.’”

“N.T. 39: ‘I told her what I saw. He was -- I didn’t see him in the line, I just know when I turned from looking to see the scream that happened down the hall, he was standing there bleeding when I actually saw him.’”

It is undisputed that as a result of the metal door closing on Samson’s right index finger, the tip of the child’s finger was amputated by the door, causing severe and permanent injuries. The school nurse attempted to stop the bleeding and called Emergency Responders for assistance.

Samson's mother initiated this civil litigation on behalf of her son against the School District of Philadelphia. Defendant-School District claims that it is immune from liability pursuant to the Tort Claims Act, 42 Pa. C.S. §8541. Plaintiff-Samson contends that the affirmatively negligent action of the School District employee brings this matter within the Real Property exception, 42 Pa. C.S. §8542.

After careful consideration of the Memoranda submitted by the parties, the Motion for Summary Judgment is DENIED in its entirety.

II. LEGAL DISCUSSION

Initially it is appropriate to note that the School District concedes the metal door is a fixture and is real property. Defendant further agrees with the presumption that a child under the age of 7 is incapable of negligence. See Pa. Standard Civil Jury Instruction 13.80 and the Subcommittee Note, for cases and discussion.

In Brewington v. City of Philadelphia, 149 A.3d 901 (Commonwealth Ct. 2016), the Appellate Court recently reviewed the issues raised herein and reversed the Trial Court's grant of summary judgment. The Brewington Court held that where, as here, the claims allege injury which was caused by the Defendant's negligence in the care, custody and control of the real property, the real property exception to immunity applies. 149 A.3d at 911 citing, Gump v. Chartiers-Houston School District, 558 A.2d 589 (Commonwealth Ct. 1989), when School District failed to install shatterproof glass, students lacerated hand falls within real property exception; Singer v. School District of Philadelphia, 513 A.2d 1108 (Commonwealth Ct. 1986), School District employee was negligent in failing to place

a gym mat properly on hardwood floor created a real property exception; Bradley v. Franklin County Prison, 674 A.2d 363 (Commonwealth Ct. 1996), prison authorities failed to provide shower tiles safe for their intended particular use, thus real property exception to governmental immunity; Leonard v. Fox Chapel Area School District, 674 A.2d 767 (Commonwealth Ct. 1996), liability can be imposed for negligence which makes governmental realty unsafe for its intended, specific and readily identifiable use.

For reasons that remain unclear, the Defendant-School District suggests that Plaintiff is asserting that Ms. Wyche, the classroom assistant, was negligently supervising the kindergarten students. In the School District's Memorandum, unpagued:

“Unlike the affirmative act in Grieff of caring or maintaining the real property, there is no affirmative act in this case relating to the care or maintenance of real property that caused injury. Plaintiff only alleges here that the affirmative act of the School District employee in closing the door when she failed to observe that the Student's hand was in the door jamb was the cause of Plaintiff's injuries. It is undisputed though that neither the teacher nor any other staff members engaged in an act that could be construed as caring for the property/door, which then led to the Student's injury. The affirmative act here is clearly the negligent supervision of students, which has long been held to not fall within any of the exceptions to immunity.”
(emphasis added)

The record does not support the Defendant-School District's argument. The exception to governmental immunity applies upon the assertion that the active negligence of an employee caused the child's injuries. Plaintiff-Samson relies on Ms. Wyche's own words that as she waited for the door to close and she turned her head and heard a scream

or a cry. She turned back and saw Samson bleeding. N.T. 17. Plaintiff-Samson's

Memorandum unpagged:

"This negligence occurred when the teacher's aide, Cynthia Wyche, closed the door without first ensuring that the door could close safely without injuring any children who may have been in its path. This action taken by Ms. Wyche to close the door amounted to negligent care, custody, and control of the door. Thus, Plaintiff, Samson Kolee's injuries -- caused by the door closing on his finger -- arose from Ms. Wyche's negligent care, custody and control of the door in question. Consequently, Plaintiffs' cause of action falls squarely within the real property exception to governmental immunity."

See, Wells v. Harrisburg Area School District, 884 A.2d 946 (Commonwealth Ct. 2005), teacher's negligent custody and control of saw caused student's injury; Cureton v. School District of Philadelphia, 798 A.2d 279 (Commonwealth Ct. 2002), the teacher's negligence in caring for and controlling a saw in teacher's custody caused student's injuries; Hanna v. West Shore School District, 717 A.2d 626 (Commonwealth Ct. 1998), active negligence of School District's employee which caused injury then the real property exception applied.

Plaintiff's expert witness, Robert T. Purifico, opined in his Report of November 4, 2017, page 4:

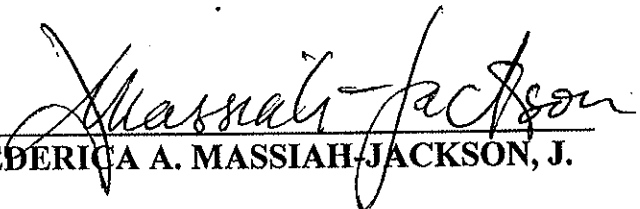
"Cynthia Wyche, a Pollock Special Education Assistant, who was aware that the metal door was dangerous to a five-year-old student, should have realized that the door would have caused harm to Samson and held it open. It was her failure to properly control the door, an affirmative action taken on her behalf, and oversee its closing, that was the cause of injury for Samson Kolee."

This Court concludes that the active negligence of the School District employee in turning her head away from the heavy metal door while the door was closing and the kindergarten children were walking through was negligent. Her negligent control of the door caused the injuries and the real property exception applies.

III. CONCLUSION

For all of the reason set forth above, the Motion or Summary Judgment filed by the School District of Philadelphia is **DENIED in its entirety.**

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.