Circuit Court for Baltimore City
Case No. 24-C-19-002811

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0441

September Term, 2020

KIMORA HODGE

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

Graeff,
Leahy,
Friedman,

JJ.

Opinion by Graeff, J.
Friedman, J., dissents.

Filed: May 7, 2021

K.H., appellant, by and through her mother, sued the Baltimore City Board of School Commissioners ("BCBSC"), appellee, in the Circuit Court for Baltimore City, alleging negligence for injuries she received when another student, M.P., threw a chair. Appellant contends on appeal that the circuit court erred in granting summary judgment in favor of BCBSC.

For the reasons set forth below, we agree, and therefore, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On September 27, 2016, K.H. was in Ms. Joanne Young's third-grade class at Gwynns Falls Elementary School. K.H. testified at her deposition that two students, M.P. and J.S., got into an altercation over a pencil. M.P. "got real mad over [the] pencil," and he started "yelling and stuff." Ms. Young told M.P. and J.S. to stop, and she got J.S. out of the classroom. M.P. then "started throwing stuff," i.e., desks and chairs. Ms. Young instructed the other students to leave the classroom. K.H. was the last student to leave the classroom. She was passing M.P. as she was "rushing out to get to the door," and M.P. threw the chair, which hit her in the neck. She stated that "it wasn't like intentional. He was just throwing stuff around." K.H. said that M.P. was having a temper tantrum, but she had never seen him do that before.

[1] Because this is an appeal from a grant of summary judgment, the facts are derived from the pleadings, deposition testimony, and the hearing on the motion for summary judgment.

K.H. came out of the classroom crying, and she was sent to the school nurse. She then went to an urgent care facility.

On May 10, 2019, K.H., by and through her mother, Rosetta Hodge, filed a negligence lawsuit against BCBSC. The complaint alleged that Ms. Young left the classroom unattended, and during that time, a child threw three chairs, one of which injured K.H. The complaint alleged negligence by the teacher in failing "to leave proper supervision in the room when she left," further asserting that she "should have quickly reentered the room on the sound of the first chair."

On February 18, 2020, counsel deposed S.H., another student in K.H.'s class. S.H. described the classroom as small, with computers in the back row and Ms. Young's desk in the front of the room. Consistent with K.H.'s deposition testimony, S.H. testified that M.P. did not intentionally strike K.H. with the chair. She stated: "[M.P.] didn't really mean to hurt [K.H.]," but K.H. "just happened to be in the way when [M.P.] was throwing chairs." S.H. stated that M.P. had never thrown furniture prior to September 27, 2016, and although he was known to act out, he had never thrown a temper tantrum prior to the incident. S.H. also testified that Ms. Young first tried to break up the altercation, but when M.P. began throwing chairs, Ms. Young tried to get all students out of the classroom. The students were running and pushing each other to get out, and K.H. went out last.

S.H. said that, when the argument first started, the students were doing classwork and Ms. Young was near the projector. She did not remember if Ms. Young was in the hallway when M.P. threw the chair that hit K.H.

On September 9, 2019, BCBSC submitted its answers to interrogatories. In response to questions about the occurrence, BCBSC stated that

> the classroom teacher, Ms. Joanne Young, was present in her classroom talking to another person in the doorway of the classroom when a student in her class, unexpectedly and unpredictably tossed a plastic chair towards the classroom floor that struck the floor and then bounced up; and when said plastic chair bounced up, [it] accidentally came into contact with [K.H.].

It further stated that "the event that transpired on September 27, 2016, i.e., the tossed chair . . . bouncing off the classroom floor and coming into contact with [K.H.], was an unpredictable instantaneous event that occurred within seconds without any time for dialogue between the teacher Ms. Young and [K.H.], the student."

On March 24, 2020, following discovery, BCBSC filed a Motion for Summary Judgment. BCBSC contended in its memorandum in support of its motion that "[t]he facts are undisputed that [M.P] did not intentionally strike" K.H. with the chair, there was "no factual dispute that Ms. Joanne Young was present in the classroom at the time [M.P.] became upset and that she took active measures to control her classroom in a manner consistent with BCBSC protocols." BCBSC argued that, in light of these undisputed facts, it could not be held "legally liable for an unpredictable, spontaneous, and accidental injury," and it was entitled to judgment as a matter of law.

With respect to the elements of a negligence claim, BCBSC asserted that there was no evidence of a breach of duty to K.H. because Ms. Young acted consistently with BCBSC protocols. It further argued that M.P.'s actions were not foreseeable, and the undisputed facts showed that Ms. Young's actions were not the proximate cause of K.H.'s injury,

which was caused by an "intervening and wholly unforeseen force," i.e., M.P.'s spontaneous and unpredictable throwing of the chair.

On April 7, 2020, K.H. filed an opposition to BCBSC's Motion for Summary Judgment ("Opposition"), stating that there were several issues of material fact in dispute, and BCBSC was not entitled to judgment as a matter of law.[2] K.H. argued that BCBSC had a duty to exercise care for the safety of all students, and given the testimony that Ms. Young was in the doorway talking with another staff member, "they should have had at least one staff member enter the classroom to protect the students in the room while another could have handled the evacuation of the room."

On April 14, 2020, BCBSC filed a reply to K.H.'s Opposition ("Reply"). It argued that K.H. had "failed to demonstrate a dispute of material fact" and failed to produce admissible evidence to support a finding that Ms. Young was negligent and/or that she, and not M.P., was the proximate cause of K.H.'s injuries.

On May 15, 2020, the court held a hearing on BCBSC's Motion for Summary Judgment. Counsel for BCBSC argued that there were no material facts in dispute and it was entitled to summary judgment. It stated that, despite the inability to foresee that the disturbance would occur, K.H. had admitted that "Ms. Young took several steps to protect the students in her classroom," including trying to evacuate them from the room. When

[2] K.H. listed the disputed facts as including whether throwing the chair was an unpredictable event given evidence that Ms. Young was getting the children out of the classroom, whether M.P. bounced the chairs off the ground or threw them in the air, and whether Ms. Young was outside talking at the time of the injury.

asked by the court where Ms. Young was during the incident, counsel for BCBSC asserted that "Ms. Young was present and working to actually resolve the issue." The court stated its understanding that it was "undisputed that [Ms. Young] was standing in the doorway," and counsel replied: "[A]t minimum, Ms. Young was in the doorway."

Counsel for K.H. stated that Ms. Young "was outside the room in the doorway talking to another teacher." He disputed BCBSC's argument that Ms. Young's location was immaterial to the issue of negligence, arguing that a "reasonable trier of fact" could find that Ms. Young "should not have been in a position where she is outside the classroom," and "[h]ad Ms. Young been in a position where there was not a child left in the classroom, essentially with [M.P.] between her and the child, she would have been able to supervise that and protect that child." Counsel stated that a reasonable trier of fact could find that one of the adults should have gone in the classroom to protect the students from the child throwing chairs. "It is foreseeable here when you have a dispute that is obviously bad enough that the teacher feels the need to remove the children from the classroom."

The court subsequently issued a Memorandum Order granting BCBSC's motion for summary judgment. The court stated that, viewing the facts in the light most favorable to K.H., Ms. Young was standing in the doorway of the classroom "speaking with another person when a student became upset over a pencil and began to throw tables and chairs." Mr. Young was "able to respond," and she "began assisting other students out of the classroom." The court found that Ms. Young's location in the doorway was not the cause of K.H.'s injuries, stating:

> There is no evidence contained in the record indicating that the student had acted in such a manner previously. Thus, there was no reason for Ms. Young to foresee that this student would begin to throw tables and chairs, which would accidently hit [K.H.] Teachers are not strictly accountable as insurers for the safety of their students. *Segerman* [*v. Jones*], 256 Md. [109,] 124–25 [(1969)]. The harm that came to [K.H.] was the result of unforeseen acts of another student, a harm to which could not have been reasonably anticipated by Ms. Young. Accordingly, the [c]ourt will grant summary judgment in favor of BCBSC.

This appeal followed.

STANDARD OF REVIEW

Maryland Rule 2-501(f) provides that a court may grant summary judgment "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." We review the circuit court's grant of summary judgment *de novo*. *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 580 (2020), *cert. denied*, __Md.__ (2021). "We conduct an independent review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 203 (2021) (quoting *Md. Cas. Co. v. Blackstone Intern. Ltd.*, 442 Md. 685, 694 (2015)). "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Id.*

DISCUSSION

K.H. contends that the circuit court erred in finding that "no reasonable trier of fact could find negligent conduct by the employees of [BCBSC]." She contends that a school

"is responsible to exercise care for the safety of all students . . . even when a student is acting up." Although K.H. concedes that Ms. Young's act of standing in the doorway "did not cause [M.P.] to throw chairs," she nevertheless asserts that, once M.P. began throwing chairs, Ms. Young had a duty to protect K.H., and she failed to fulfill that duty. She argues that a reasonable trier of fact could find that the school "should have had at least one staff member enter the classroom to protect the students in the room while another could have handled the evacuation."

BCBSC contends that the court's grant of summary judgment was "correct as a matter of law." It asserts that the following material facts are undisputed: (1) "Ms. Young was present in the classroom when M.P. became disruptive," and "she sought to de-escalate the situation by instructing M.P. and another student to 'stop' fighting over the pencil"; (2) "when M.P. began to throw classroom furniture, Ms. Young immediately took safety measures to remove the other students from being harmed"; and (3) "M.P.'s actions on September 27, 2016 were not reasonably foreseeable because prior to that day, he had never exhibited this type of behavior." It argues that the facts are undisputed that the proximate cause of K.H.'s injuries was M.P.'s unforeseen actions.

To sustain an action for negligence, a plaintiff has the burden of proving: "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of that duty." *Davis*, 249 Md. App. at 205–06 (quoting *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704,

727 (2020). To survive a motion for summary judgment, a plaintiff must show evidence on each element that is sufficient to permit a trier of fact to find in his or her favor. *Id.* at 206.

There is no dispute here that the first element, duty, was shown. A school has a duty "to exercise reasonable care to protect a pupil from harm." *Lunsford v. Bd. of Ed. of Prince George's Cty.*, 280 Md. 665, 676 (1977) (citing *Segerman v. Jones*, 256 Md. 109, 123–24 (1969)).

The existence of a duty, however, does not establish a negligence claim. A plaintiff must show a breach of that duty that proximately caused the injury. *Davis*, 249 Md. App. at 215.

In assessing whether there was a breach of duty here, we note that a teacher is not an insurer of the safety of students, but rather, he or she is "held only to the standard of reasonable care exercised by a person of ordinary prudence." *Segerman*, 256 Md. at 125. In that regard, we find the case of *Buchholz v. Patchogue-Medford Sch. Dist.*, 88 A.D.3d 843 (N.Y. App. Div. 2011), instructive. In that case, a student was assaulted in the hallway by two other students. *Id.* at 843–44. The court explained:

> Schools have a duty to provide supervision to ensure the safety of those students in their charge and are liable for foreseeable injuries proximately caused by the absence of adequate supervision. In determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated. Injuries caused by the impulsive, unanticipated act of a fellow student ordinarily will not give rise to negligence on the part of the School District absent proof of prior conduct

> that would have put a reasonable person on notice to protect against the injury-causing act.

Id. at 844 (internal quotation marks and citations omitted). The court held that, because the school district had no knowledge of prior violent conduct by the two students, it could not have reasonably foreseen the attack on the plaintiff, and therefore, the district was entitled to summary judgment on the claim of negligent supervision.

In this case, however, the claim is not that the teacher was negligent in failing to anticipate that M.P. would throw chairs. Rather, K.H. claims that, once M.P. began to throw things, Ms. Young was negligent in failing to intervene and go into the classroom to protect the students.

The court in *Buchholz* addressed this type of situation as it related to a security guard who witnessed the assault. The court held that, where there was testimony that the assault occurred over the course of "a few minutes," and the security guard watched from a few feet away, there was an issue of fact whether he was presented with a dangerous situation and failed to intervene in time to prevent some of the injuries sustained. *Id.* at 845. Accordingly, the security guard was not entitled to summary judgment. *Id.*

Similarly, in *Siller v. Mahopac Cent. Sch. Dist.*, 18 A.D.3d 532 (N.Y. App. Div. 2005), a gym teacher witnessed the start of a fight. The court held that summary judgment was not appropriate because there was "an issue of fact as to whether the plaintiff's injuries were a foreseeable consequence of the teacher's alleged failure to respond appropriately as the events unfolded in front of him." *Id.* at 533.

We are persuaded by the analysis in these cases. We conclude, based on the facts here, that there was an issue of fact regarding whether Ms. Young's decision to stand in the doorway and tell the students to exit the classroom when M.P. started throwing chairs, rather than enter the classroom to address the situation, was a breach of her duty to the students.

As BCBSC notes, however, even if the school breached its duty of care, the case would go to a trier of fact only if there was evidence that the negligence was a proximate cause of K.H.'s injuries. *See Cramer v. Hous. Opportunities Comm'n of Montgomery Cty.*, 304 Md. 705, 712–13 (1985) ("One who breaches a duty owed to another is said to be negligent, but that negligence is actionable only if it is a proximate cause of damage.").[3] This Court recently explained the element of proximate cause as follows: "[T]o be a proximate cause of an injury, 'the negligence must be 1) a cause in fact, and 2) a legally cognizable cause.'" *Davis*, 249 Md. App. at 215 (quoting *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 317 (2019)). "Causation-in-fact" raises "the threshold inquiry of whether a defendant's conduct actually produced an injury." *Id.* (quoting *Macias*, 243 Md. App. at 318). *Accord Troxel v. Cantina*, 201 Md. App. 476, 505 (2011) ("Causation-in-fact may be found if it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injuries."), *cert. denied*, 424 Md. 630 (2012). The question of legal causation, however, "often involves a determination of whether the injury

[3] K.H. does not address the issue of proximate cause in her brief, relying solely on the argument that Ms. Young breached her duty to protect the students.

was foreseeable." *Wankel v. A & B Contractors, Inc.*, 127 Md. App. 128, 159, *cert. denied*, 356 Md. 496 (1999). Whether negligence is the proximate cause of an injury generally is a question of fact, and it becomes one of law only in "cases where reasoning minds cannot differ." *Segerman*, 256 Md. at 135.

BCBSC cites to *Segerman* and *Madden v. Clouser*, 262 Md. 144 (1971), to support its argument that M.P.'s unforeseen actions were the proximate cause of K.H.'s injuries, and there was no evidence that Ms. Young could have prevented K.H. from being injured. Those cases, however, are distinguishable from this case.

In *Segerman*, 256 Md. at 111, a teacher left the classroom for a few minutes while her students performed calisthenic activities. During Ms. Segerman's absence, a student performed the activity improperly and kicked the head of another student, causing that student's teeth to hit the floor and come out. *Id.* at 116–17. The student filed suit, and a jury found against Ms. Segerman. *Id.* at 112. The Court of Appeals reversed. *Id.* at 135. It held that, even assuming that Ms. Segerman was negligent in leaving the room, her absence or failure to supervise was not the proximate cause of the student's injury because her presence could not have prevented it. *Id.* at 122. The Court stated that, "[w]here supervision could not have prevented the injury, its lack will of course not be held to be the cause of the injury." *Id.* at 125. The Court held that the proximate cause of the teeth injury was "an intervening or wholly unforeseen force," i.e., the other student's failure to do the exercises as instructed. *Id.* at 123. The Court noted, however, that a teacher's failure to supervise could lead to liability, even if the teacher could not have prevented the injury,

if the injury was a reasonably foreseeable consequence of a failure to supervise. *Id.* at 131. *Accord Madden*, 262 Md. at 147 (stating, in *dicta*, that pursuant to *Segerman*, summary judgment was proper where a student was struck in the eye with a pencil in the teacher's absence).

In both *Segerman* and *Madden*, the theory of liability was that the negligence that caused the injury was the absence of the teacher from the classroom. *Segerman*, 256 Md. at 122; *Madden*, 262 Md. at 146–47. In both cases, there was a quick, unforeseeable action by a student, which could not have been prevented if the teacher had been present.

K.H.'s complaint initially alleged negligence based on Ms. Young's absence from the classroom. If that was the sole claim, given M.P.'s lack of prior similar incidents, the court properly could conclude, similar to *Segerman*, that it was not foreseeable that M.P. would throw chairs in her absence, and therefore, as a matter of law, her absence was not the proximate cause of K.H.'s injury.

K.H. argues, however, that the teacher was negligent when, after M.P. started throwing things, neither of the two adults in the doorway reentered the room and intervened to protect K.H. from being hit by a chair. This presents a factual issue whether, given the time span in which M.P. was throwing chairs, a teacher could have intervened to prevent K.H.'s injury.[4] Accordingly, the circuit court erred in granting summary judgment in favor

[4] We do not suggest, as the dissent states, that the teacher was an idle bystander. She was attempting to get the children out of the room. The question for the factfinder is whether she could have done more to protect K.H.

of BCBSC.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLEE.

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Dissenting Opinion by Friedman, J.

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There are, regrettably, few cases in Maryland discussing torts committed in schools. Perhaps the most important is Judge Singley's opinion for the Court of Appeals in *Segerman v. Jones*, 256 Md. 109 (1969). While comprehensive in some details, including the lyrics to the song "Chicken Fat," *id.* at 113, n.3 and the dimensions of the teacher's desk, *id*. at 113, *Segerman* is woefully skimpy in other details. I glean from the opinion three key features:

- *Segerman* is a failure to supervise case. The teacher, Ms. Segerman, was away from her classroom, down the hall, at all relevant times;
- Although foreseeability is ordinarily a factual question in a negligence case, in *Segerman* the Court determined that the injury was unforeseeable as a matter of law because Ms. Segerman "had no reason to apprehend that any of the children would leave his assigned place or that any of the children would perform the exercises improperly." *Id*. at 134; and
- Although proximate cause is usually a jury issue, it can be decided by the court as a question of law when reasoning minds cannot differ. *Id*. at 135. In *Segerman*, the Court of Appeals held that no one could conclude that the teacher's absence was the proximate cause of the student's injury.

In this case, the trial court found that the teacher was not absent from the classroom when the incident occurred, but nevertheless followed *Segerman* and found that the student's violent outburst was not foreseeable, and that the teacher did not proximately cause K.H.'s injuries. On that basis, the trial court granted summary judgment in favor of the Baltimore City Board of School Commissioners, and on that basis, the Appellee urges affirmance.[5]

[5] Appellant doesn't help things, arguing that the trial court erred in granting summary judgment because it wasn't yet determined whether or not the chair that M.P. threw *bounced* on the floor before hitting K.H. This is the only dispute of fact Appellant

(…continued)

My colleagues and I all agree that this case is factually dissimilar from *Segerman*. The teacher in *Segerman* had left the children alone and was completely absent from the classroom. As such, *Segerman* was a failure to supervise case. Here, the evidence in the summary judgment record indicates that the teacher was present and responding to M.P.'s temper tantrum when he threw the chair that hit K.H. This then, we all agree, is not a failure to supervise case.

It is here, however, that we part company.

My colleagues put this case in a new category: what I will call the idle bystander cases. They rely on two New York cases for this category: *Buchholz* and *Siller*. In each of those cases, a defendant—in *Buchholz*, a security guard and in *Siller*, a gym teacher—sees a tort being committed and does nothing to stop it. In each case, the New York court sent the case back to allow a jury to determine whether the idle bystander had a duty to intervene and whether the failure to intervene was the proximate cause of the plaintiff's injuries. *Buchholz v. Patchogue-Medford Sch. Dist.*, 88 A.D.3d 843 (N.Y. App. Div. 2011); *Siller v. Mahopac Cent. Sch. Dist.*, 18 A.D.3d 532 (N.Y. App. Div. 2005). Similarly, my colleagues remand this case to determine whether the teacher here was an idle bystander and, if so, whether her failure to intervene was the proximate cause of the plaintiff's injuries.

While I agree that this case is not a failure to supervise case, I do not see this as an idle bystander case either. I don't think there is any evidence that the teacher here was an

identifies, and in any event, this factual dispute is not material. There are no other grounds upon which Appellant argues that summary judgment was improper.

idle bystander. Rather, the uncontested facts show that she took active measures to control classroom. She directed the students to end their dispute, attempted to break up the altercation, and ordered all the students to evacuate the classroom. Critically, the teacher's actions here were consistent with the School Board's protocols.[6] That she was, at the moment the chair was thrown, outside of the classroom, or at the doorway, coordinating the evacuation with her colleague, does not, in my view, make her an idle bystander. More importantly, irrespective of whether we characterize the teacher here as absent, idle, or active, the other two fundamental tenets of *Segerman* do not cease to apply.

First, the *Segerman* Court was crystal clear that for a teacher to be liable for student misbehavior, the misbehavior had to be foreseeable. *Segerman*, 256 Md. at 134. The summary judgment record is clear that this was M.P.'s first temper tantrum, and there was no evidence that he had ever misbehaved in a way that would make his outburst foreseeable. As in *Segerman*, the teacher had no reason to apprehend that this misbehavior

[6] In *Hunter v. Bd. of Educ. of Montgomery Cnty.*, the Court of Appeals explained that a school's day-to-day policies are entitled to deference, and that even where a wrong is committed, certain educational decisions do not create a cause of action. 292 Md. 481, 484 (1982). Remanding this case for the jury to determine whether the teacher here could have done more, or should have done something else,

> would in effect position the courts of this State as overseers of both the day-to-day operation of our educational process as well as the formulation of its governing policies. This responsibility we are loathe to impose on our courts. Such matters have been properly entrusted by the [General] Assembly to the State Department of Education and the local school boards who are invested with authority over them.

Id. at 488.

would occur. And although foreseeability is usually a jury question, here, as in *Segerman*, it was not foreseeable as a matter of law.[7]

And, *second*, the *Segerman* Court very clearly held that for Ms. Segerman to be liable, her absence had to be the proximate cause of the plaintiff's injury. But here, where Ms. Young was not absent, I think there is no argument that her conduct in evacuating the other children, whether characterized as action or inaction, could have been the proximate cause of K.H.'s injury.

Thus, although I agree with my colleagues that this is not a failure to supervise case, I would find that we must follow the (admittedly sketchy) foreseeability and proximate cause components of the *Segerman* analysis. I would affirm the grant of summary judgment. I, therefore, dissent.

[7] My colleagues avoid this problem by treating M.P.'s temper tantrum as several separate events. The majority holds that a jury could conclude that the first chair that M.P. threw made it foreseeable that he would throw the second chair. I note that K.H. didn't plead or argue this "separate occurrences" theory, and am unaware of cases in which foreseeability arises so quickly.