2018 IL App (3d) 170722-U

Order filed June 28, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

KENNETH TRAPP, as Parent and Next Friend of Matthew Trapp, a Minor Plaintiff-Appellant, v. VALLEY VIEW SCHOOL DISTRICT #365-U, a/k/a Brooks Middle School, Defendant-Appellee.	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-17-0722 Circuit No. 16-L-656 Honorable Raymond E. Rossi, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly dismissed plaintiff's complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)).

¶ 2 Plaintiff, Kenneth Trapp, filed suit against Valley View School District #365-U (the District) in September 2016. He alleged that his son, Matthew, sustained a head injury during a wrestling meet at Brooks Middle School—a school within the District—on December 9, 2015. Plaintiff filed three complaints. The third complaint alleged, in relevant part, that the District

engaged in willful and wanton conduct by separating two wrestling mats to create a "walking space" between them and by directing the wrestlers to "warm up" or "practice" on the two mats simultaneously. Matthew allegedly struck his head on the gym floor within the walking space. The District filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). The trial court granted the District's motion; it found that plaintiff's allegations failed to state a willful and wanton conduct claim. We affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 Count I of plaintiff's first two complaints alleged negligence claims against the District. The trial court dismissed plaintiff's negligence claims with prejudice because the Tort Immunity Act (745 ILCS 10/3-106, 3-108, 1-206 (West 2016)) shields local public entities, including school districts, from liability for negligence. Plaintiff's second amended complaint, which is at issue here, alleged that the District engaged in willful and wanton conduct; the Tort Immunity Act does not shield local public entities from liability for such conduct (*id.* (§§ 3-106, 3-108, 1-210)). The allegations on which plaintiff based his claim included:

> "5. Wrestling is a dangerous sport and is associated with certain known risks of injury because wrestling involves wrestlers being thrown and wrestled to the ground.
>
> 6. Wrestling mats are used to mitigate the dangers associated with the sport of wrestling.
>
> 7. The wrestling mats contain a wrestling circle known as a 'protection area'. The protection area is a designated space for wrestlers to use while on wrestling mats.

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9. The purpose of the protection area is to prevent injuries that can occur if youth wrestlers are wrestled or thrown onto an area outside of the mat.

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11. *** Defendant placed two of the wrestling mats on the floor for its meet.

12. *** Defendant, per its normal and intended plan, intentionally separated the two wrestling mats to create a 'walking space' between the mats for coaches and staff.

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15. *** Defendant knew that wrestlers were likely to suffer an injury if wrestled or thrown onto the area of exposed floor in the 'walking space' instead of the wrestling mat.

16. *** Defendant directed an excessive number of youth wrestlers on to the two wrestling mats, simultaneously, to conduct practice, warm-ups, and sparring.

17. *** [A]n excessive number of youth wrestlers were forced to warm up outside of the designated protection area on the wrestling mats, near the area of exposed floor in the 'walking space' between the two separated wrestling mats.

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19. *** [Y]outh wrestlers, including Matthew Trapp, were exposed to a safety hazard that substantially increased the risk of harm to youth wrestlers, as compared to the risk normally associated with wrestling, due to Defendant's intentional setup and separation of the two wrestling mats.

20. *** Defendant knew that instructing or directing an excessive number of youth wrestlers onto the two wrestling mats, simultaneously, would result in youth wrestlers being unprotected or lacking a sufficient protection area on the wrestling mat, near the area of exposed floor in the 'walking space.'

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28. *** Defendant was guilty of one or more of the following willful and wanton acts and/or omissions manifesting an utter indifference for the safety of Matthew Trapp:

(a) *** by intentionally separating the two wresting mats and instructing or directing an excessive number of youth wrestlers onto the wrestling mats during warm-ups, wrestling and/or sparring, leaving Matthew Trapp on a small section of the wrestling mat outside of the protection area, at or near the exposed and unprotected floor inside the 'walking space';

(b) *** by allowing [Matthew Trapp] to wrestle or spar outside of the protection area of the mats thereby increasing

his risk of injury from being wrestled or thrown onto the area of exposed floor in the 'walking space';

(c) *** by observing Matthew Trapp warming up, sparring, or wrestling near the area of exposed floor and failing to take any action to remediate the obvious danger ***;

(c) [*sic*] *** otherwise acted with utter indifference for the safety and welfare of Matthew Trapp while he was engaging in wrestling warm-ups, sparring, or wrestling at Defendant's wrestling meet; and

(d) intentionally exposed youth wrestlers to a substantial risk or harm."

¶ 5 The District filed a section 2-615 motion to dismiss plaintiff's willful and wanton claims. The motion argued that plaintiff failed to allege facts that demonstrated willful and wanton conduct. Instead, plaintiff merely characterized the same conduct on which he based his negligence claims as willful and wanton.

¶ 6 On October 5, 2017, the trial court held a hearing on the District's motion to dismiss. The parties rested on the pleadings; the court granted the District's motion, dismissing the case with prejudice. Plaintiff appeals.

¶ 7

¶ 8 ANALYSIS

¶ 9 We review dismissal orders *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). "In ruling on a section 2-615 motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the

record may be considered." *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). To survive a section 2-615 motion, "the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009).

¶ 10 Sections 3-106 and 3-108 of the Tort Immunity Act (Act) shield public entities and their employees from liability for negligence; this immunity does not apply if liability is based on willful and wanton conduct. 745 ILCS 10/3-106, 3-108 (West 2016); *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 9. The Act defines willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2016). In 1998, the legislature amended section 1-210 to state that this definition "shall apply in any case where a 'willful and wanton' exception is incorporated into any immunity under this Act." 745 ILCS 10/1-210 (West 1998). As the *Thurman* court recognized, this amendment established that section 1-210's definition of willful and wanton conduct supersedes the common law definition in cases to which the Act applies. See *Thurman*, 2011 IL App (4th) 101024, ¶¶ 11-13.

¶ 11 A plaintiff who alleges a willful and wanton conduct claim under the Act must demonstrate such conduct through well-pled facts, not by merely characterizing certain conduct as "willful and wanton." *Id.* ¶ 10 (citing *Winfrey v. Chicago Park District.*, 274 Ill. App. 3d 939, 943 (1995)). A plaintiff must plead facts that show the public entity was informed of a dangerous condition, knew that others sustained injuries because of the condition, or intentionally removed a safety feature or device from its recreational property. *Id.* (citing *Floyd v. Rockford Park District*, 355 Ill. App. 3d 695, 701 (2005)). A court may "hold as a matter of law that a public

employee's actions did not amount to willful and wanton conduct when no other contrary conclusions can be drawn." *Young v. Forgas*, 308 Ill. App. 3d 553, 562 (1999).

¶ 12 Plaintiff argues that the complaint sufficiently alleged that the District engaged in willful and wanton conduct. He claims that the District ignored or failed to remediate an obvious danger associated with "the hazardous activity of wrestling" by separating the mats to create a walking space and directing the youth wrestlers to warm up outside of the protection area—the circle in the center of a wrestling mat. Plaintiff also claims that the court erred because it "considered, *sua sponte*, the effect of exculpatory releases" when it ruled on the District's motion to dismiss. Since the complaint did not address exculpatory releases, the court should not have considered them in ruling on the District's section 2-615 motion. We address each argument separately.

¶ 13 I. Sufficiency of Plaintiff's Allegations

¶ 14 The supreme court recently restated its long-settled rule that school employees who exercise "some precautions" to protect students from injury cannot be guilty of willful and wanton conduct, even if the precautions are insufficient. *Barr v. Cunningham*, 2017 IL 120751, ¶ 18. Plaintiff does not dispute that the District's employees placed padded wrestling mats on the gym floor to protect the wrestlers, including Matthew. This undisputed fact establishes that the District's employees exercised "some precautions" to protect the wrestlers.

¶ 15 Plaintiff attempts to overcome this fact by arguing that the District employees removed a necessary safety device when they separated the two mats to create a walking space. This argument is a red herring; neither the walking space nor the District employees' decision to separate the mats is actionable. If the District employees placed only one mat on the gym floor during warm-ups, exposed gym floor would surround all four sides of the mat. Plaintiff never alleged that, for whatever reason, two mats side-by-side are necessary to protect wrestlers during

warm-ups. Even if plaintiff made this allegation, his proposed mat alignment would be surrounded by exposed gym floor on all four sides. Plaintiff neither alleges nor cites any safety standard that indicates the existence of exposed gym floor during a wrestling meet constitutes a dangerous condition.

¶ 16 The gym floor would have been exposed regardless of how the District employees positioned the mats; the fact that Matthew hit his head on a particular area of exposed gym floor does not, by itself, render the District employees' conduct negligent or willful and wanton. Plaintiff's pleadings clearly establish that it would be safe for a single pair of wrestlers to spar in the protection area on each mat during warm ups, regardless of the mats' locations or alignment. There was nothing wrong with the mats' alignment. The only potentially actionable allegation is that District employees directed multiple pairs of wrestlers to warm up on each mat; this direction required them to spar outside of the protection area.

¶ 17 Although this allegation carries more weight than the "walking space" claim, it falls well short of willful and wanton conduct. In relevant part, the complaint's alleged facts state the District employees knew that wrestling is a dangerous sport, that wrestlers could suffer injuries if they landed on the exposed gym floor, and that wrestling outside of the mat's protection area was less safe than wrestling within it. Nonetheless, they directed multiple pairs of wrestlers to warm up on each mat simultaneously. These allegations construct a negligence theory; they illustrate a course of action that arguably increased wrestlers' risk of injury, not one that showed "an utter indifference to or conscious disregard for" the wrestlers' safety. See 745 ILCS 10/1-210 (West 2016). Characterizing arguably negligent conduct as willful and wanton is insufficient to plead the cause of action. See *Winfrey*, 274 Ill. App. 3d at 943. The complaint lacks allegations that demonstrate the District or its employees had notice of a particularly dangerous condition and

disregarded the risks it presented. As discussed above, exposed gym floor that surrounds a wrestling mat does not necessarily present a dangerous condition. As to the number of wrestlers directed to warm up on each mat, there is no allegation or evidence that past wrestlers sustained injuries under similar circumstances. In fact, the complaint lacks any specific factual allegation from which anyone could infer that the number of wrestlers directed to warm up on each mat created an obviously dangerous situation. The complaint also fails to allege or demonstrate facts that equate the potential risks of serious injury during wrestling warm-ups to those of highly dangerous activities such as trampoline jumping (see *Murray v. Chicago Youth Center*, 224 Ill. 2d 213 (2007)) or operating dangerous tools and machinery (see *Hadley v. Witt Unit School District 66*, 123 Ill. App. 3d 19 (1984)).

¶ 18 The complaint's allegations fail to plead a case for willful and wanton conduct. Nothing in the record, which includes plaintiff's three complaints, indicates that he could plead some set of facts related to Matthew's injury that sufficiently support a willful and wanton conduct claim.

¶ 19 II. Matters Outside of the Pleadings

¶ 20 Plaintiff alternatively claims that the trial court erred because it "considered, *sua sponte*, the effect of exculpatory releases" when it decided the District's section 2-615 motion. Plaintiff correctly points out that courts deciding a section 2-615 motion to dismiss may not consider facts or issues not raised in the complaint. See *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005); *Gilmore v. Stanmar, Inc.*, 261 Ill. App. 3d 651, 654 (1994). It is clear that neither party's pleadings mentioned a release. However, it is equally obvious that the court never considered the issue in making its judgment.

¶ 21 Plaintiff's only support for this claim is a short discourse between plaintiff's counsel and the court at the October 5, 2017, motion to dismiss hearing. This is the discourse:

"THE COURT: You have said that several times, and it is true, [wrestling] is a dangerous sport.

MR. MALM: Right.

THE COURT: Typically there are releases given to the parents that acknowledge—whether or not those releases are valid is another issue.

MR. MALM: That's not before the Court.

THE COURT: I know.

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THE COURT: But you continue to say that wrestling is a dangerous sport. I agree. Dangerous such that sometimes children get injured. That doesn't mean it's actionable.

MR. MALM: *** There was supposed to be a mat there. Yes, we acknowledge that wrestling is a dangerous sport, but suggesting that maybe the parent signed a waiver again illustrates—.

THE COURT: No, no, I bring that up to agree with you that wrestling is a dangerous sport."

¶ 22 This discourse occurred *after* the trial court orally announced its decision to grant the District's motion—the court issued its decision before it ever mentioned releases. Regardless, the court mentioned releases only to agree with counsel that wrestling is a relatively dangerous sport—parents probably do not sign many releases for chess club or student council. This

exchange between the court and plaintiff's counsel provides no evidence that the court improperly considered issues outside of the pleadings when it decided to dismiss the case.

¶ 23 Regardless, we review a trial court's judgment, not its reasoning. The court correctly found that plaintiff's second amended complaint (the third attempt to plead a cause of action) failed to state a cause of action for willful and wanton behavior.

¶ 24 We affirm the trial court's judgment to dismiss plaintiff's second amended complaint with prejudice.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 27 Affirmed.