[Cite as *Strozier v. Aurora Child Dev. Ctr.*, 2011-Ohio-2076.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Venus Strozier	Court of Appeals No. L-10-1324
Appellant	Trial Court No. CI200904769
v.	
Aurora Child Development Center	**DECISION AND JUDGMENT**
Appellee	Decided: April 29, 2011

* * * * *

Kenneth L. Mickel and Kimberly C. Kurek, for appellant.

Frank Leonetti III and Justin D. Harris, for appellee.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas granting summary judgment to appellee, Aurora Child Development Center, on a complaint alleging that appellee was negligent, resulting in an injury to the daughter of appellant. For the reasons that follow, we affirm.

{¶ 2} Aurora Child Development Center ("Aurora") is a daycare center for young children. Brianna Strozier, daughter of appellant, Venus Strozier, was enrolled at the center on January 9, 2004. On that day, two-year-old Brianna was playing at Aurora when another child stepped on her arm and fractured it.

{¶ 3} On June 8, 2009, appellant filed a complaint against Aurora arguing that Brianna's injury was the result of Aurora's negligent supervision. Appellee filed a motion for summary judgment which was granted on October 1, 2010. Appellant now appeals setting forth the following assignment of error:

{¶ 4} "The court erred as a matter of law by granting appellee's motion for summary judgment."

{¶ 5} On review, appellate courts employ the same standard for summary judgment as trial courts. *Lorain Natl. Bank v. Saratoga Apts*. (1989), 61 Ohio App.3d 127, 129. The motion may be granted only when it is demonstrated: "* * * (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C).

{¶ 6} Generally, in order to establish negligence, a plaintiff has the burden to show the existence of a duty on the part of the defendant, a breach of that duty, and that the

breach proximately caused the aggrieved party's injury. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St.3d 677, 680. The issue of whether or not a duty exists in a negligence action is one of law for the court to determine. *Gin v. Yachanin* (1991), 75 Ohio App.3d 802, 804, citing *Mussivand v. David* (1989), 45 Ohio St.3d 314.

{¶ 7} In her motion for summary judgment, appellant contends that a genuine issue of material fact exists as to whether Aurora breached a common law duty of ordinary or reasonable care. Ordinary care has been defined as that care which the reasonable person of ordinary prudence would exercise in light of the magnitude of the risk of harm created, the utility of the actor's conduct, and all the surrounding circumstances. Black's Law Dictionary (8th Ed.2009) 225.

{¶ 8} Brianna was injured while playing on an "indoor climber." This was described as a "U" shaped indoor play apparatus with a tube to climb through. The tube led to a netted ball pit and ended with a slide. While Brianna was crawling from the netted ball pit to the slide, a two-year-old boy stepped on her arm.

{¶ 9} In her deposition, Angelina Clouse, an Aurora teacher who was present the day of the accident, testified that she was standing at the netted area watching the children when Brianna started crying after the boy stepped on her arm. Clouse testified that she retrieved Brianna from the climber and immediately put ice on her arm. When appellant arrived, Clouse testified that she advised appellant to take Brianna to the emergency room because Brianna had favored her arm for the rest of the day.

{¶ 10} Regarding the climber, Clouse testified that one teacher was always stationed at the front and rear of the climber and another teacher was always stationed at the netted ball pit. The children always wanted to go into the climber all at once so the teachers were attempting to teach the children to go one at a time. She explained that the children often liked to stop in the netted ball pit so it was necessary for someone to be present, as Clouse was the day of the accident, to assure the children were moving through the climber.

{¶ 11} It is undisputed that Aurora was in compliance with state law governing the operation of a daycare. Further, the climber was inspected by the state each year and approved for use. In support of her argument, appellant cites to Clouse's testimony wherein she states that she and her fellow teachers decided to have someone stand at the netted area and to have people stationed at the entrance and exit of the climber when it was being used by the children. She testified that they decided to do this for safety reasons and to keep the children moving through the climber.

{¶ 12} In the instant case, appellant has put forth no evidence that defendant violated any duty which caused the resulting injury. The record shows that the accident occurred under proper and attentive supervision. The teachers in the room met all qualifications and standards recognized by the state of Ohio and the proper student/adult ratio in the room met the standards set by the state. The children were acting properly and there was nothing the teacher could do to prevent this sudden and unexpected accident. "[S]upervisors of a day nursery are charged with the highest degree of care

toward the children placed in their custody * * * [but] are nevertheless not the absolute insurers of their safety and cannot be expected or required to prevent children from falling or striking each other during the course of normal childhood play." *Oldham v. Hoover* (La.1962), 140 So.2d 417, 421.

{¶ 13} Accordingly, we find that there was no issue of material fact as to whether the teachers at Aurora used proper precaution and supervision when Brianna was playing on the climber. Furthermore, we find that Aurora did not breach its duty of ordinary care to Brianna. Appellant's sole assignment of error is found not well-taken.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE