

Insufficient supervision

Dunn v State of Victoria

County Court of Victoria, unreported 27 May 1997

Hayden Stephens, Melbourne



Hayden Stephens

The Plaintiff claimed damages from the State of Victoria for injuries which befell him on the grounds of Yarraville Primary School on 11 June 1993. The injury he suffered was a penetrating injury to the left eye which was left with permanently impaired vision. He alleged that the incident causing injury occurred by reason of negligence of the teachers at the school, namely that there was inadequate supervision of the children at the time of the incident.

The Plaintiff aged 10 was in Grade 5. During a morning recess about ten children, including the Plaintiff, went to the school hall to practise the school play. The Plaintiff's evidence was that the play reading was unsupervised by a teacher.

The Plaintiff read a few lines for which he was criticised. He was eventually forced to leave the hall by Grade 6 students.

Once outside, the Plaintiff banged on the window to disturb his class mates. A fellow student inside the hall came across to the window and told the Plaintiff to go. The Plaintiff retreated but soon after again banged loudly on the window. Again, the student inside came to the window and shouted for the Plaintiff to go. The Plaintiff again retreated but again soon after recommenced banging.

On the last occasion, the student inside left the hall and chased the Plaintiff outside. The student chased the Plaintiff down to the corner of the building and around to the side. At that point both the Plaintiff, ahead of the other student, stopped and turned back. The student also stopped, bent down and picked up a stone and hurled it at the Plaintiff striking him in the left eye.

The Court found that the Defendant had been negligent. It held that it was necessary to have two teachers on joint patrol during morning recess but on this occasion there was only one. Had there been two teachers performing patrol duties, namely one going clockwise and

the other anti-clockwise, the Plaintiff and the student would have been in view of one or the other for a considerable period of the chase with the result that the chase would have been abandoned or at least the student would not have been emboldened to pick up the rock and hurl it at the Plaintiff. The Court concluded that the

negligent failure to provide adequate supervision was a clear cause of the Plaintiff's injury and awarded him \$55,000 in general damages. ■

Hayden Stephens is an Associate at Slater & Gordon, phone 03 9689 9622, fax 03 9689 2002

\$123,000 for poke in eye

By RUSSELL
COULSON
County Court reporter

A STUDENT who was partly blinded with a stick during schoolyard high jinks yesterday gave the State of Victoria a caning with a \$123,000 payout.

Justin Psalia, now 16, was awarded the sum by a County Court judge who found the state negligent on the basis that it breached the duty of care it owed him as a state school pupil.

But Judge Barry Dove dismissed any legal action against Justin's friend, Glen Cassar, who wielded the stick, saying he had decided he would not have realised the consequences of his behaviour.

The judge also dismissed a counterclaim by the State of Victoria that Justin was partly responsible for his own injury, ruling that there was no evidence to support this.

The court heard that Justin lost about 80 per cent of the vision in his right eye after he was hit

by a flying broken branch, which snapped as Glen Cassar swung it "like a baseball bat" against a metal veranda pole.

Judge Dove, making his ruling, said there had been no staff supervision of Justin, Glen, and most of the up to 100 other Year Seven students in the area, who he called the school's most vulnerable and immature pupils.

He said it was common sense, as well as official policy, that students be supervised in the 10-15 minutes before class as well as during recesses.

Judge Dove said a stick was of considerable appeal to a child of 12, and a reasonable teacher ought to have been aware that it could have been used to cause injury.

Rejecting the state's defence that the prospect of an accident was fanciful, the judge said the likely presence of a stick in the area, and the potential that it could be put to dangerous use, was clearly foreseeable.

It could not be said that the accident was far-fetched or fanciful, and a teacher could have stopped Glen striking the

pole with the stick or have ensured, by just being there, that this dangerous behaviour never started, he said.

Judge Dove, who said there had been no plan in place to supervise students before 8.30am, rejected evidence by a teacher who said he recalled the incident happening some time before then.

An accident report by the teacher, signed by the principal and timing the accident at 8.40, which was when the boys said it happened, was more likely to be accurate, and the teacher was either reconstructing the evidence from an incorrect memory, or being dishonest.

Judge Dove awarded Justin, who he said had suffered a serious and permanent loss of vision, a total of \$123,904.38, but granted the State of Victoria a 21-day stay of the judgement.

Justin last night said through his solicitor, Garry Mann of Richmond and Bennisson, that he was very pleased with the award.

A Department of Education spokesman said

the department was considering the decision to determine what further action, if any, to take in the case.

But there was little schools could do to stop such incidents, Victorian Secondary Principals Association president Ted Brierly said last night.

"Schools can't afford any more staff for extra supervision," he said.

"But even if schools double the number of teachers on yard duty, things like this will still happen. It's most unfortunate, but you can't guarantee complete safety for every student, every minute of the day.

"And that's the same in all schools - government, Catholic and private."

Mr Brierly said all schools had their own insurance policies to cover damage claims.

He said schools had also introduced bullying policies to stop playground violence.

"But there's no way teachers or principals can predict or stop problems like this," he said.

"Schools are always careful, but there will always be a risk."

The Herald-Sun 23/6 1998. Reproduced with permission.