NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0636

SHARON HIGGINBOTHAM AS NATURAL TUTRIX OF HER MINOR CHILD, JACKLYN HIGGINBOTHAM

VERSUS

COMMUNITY CHRISTIAN ACADEMY, INC. AND SHELTER MUTUAL INSURANCE COMPANY

Judgment rendered: February 9, 2007

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On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number 493,423; Division I (24)
The Honorable R. Michael Caldwell, Judge Presiding

****

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Shelter Mutual Insurance Company & Community Christian Academy

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

Hughes, J., concurs with reasons.

DOWNING, J.

Community Christian Academy, Inc., and Shelter Mutual Insurance Company (collectively, "Community") appeal a judgment in which Community was held liable in damages for injuries to the fourth grade student, Jacklyn Higginbotham. The trial court found that Community was negligent in its supervision of Jacklyn, who ran into a volleyball pole after dismounting a merry-go-round after the school bell sounded for return to class. Community raises one assignment of error: that the trial court erred as a matter of law in determining that Community was negligent in its supervision of students during the last minute of recess on the date of the accident. Finding no error of law or fact, we affirm the judgment of the trial court.

Despite assigning legal error as its basis for appeal, Community identifies the "key question" for us to consider as "whether or not the school was negligent in that it did not have a teacher near the merry-go-round that last minute of recess." In deciding this case, the trial court noted that the Louisiana Supreme Court set out the criteria for evaluating negligent supervision cases against schools and teachers in **Wallmuth v. Rapides Parish School Bd.**, 01-1779 (La. 4/3/02), 813 So.2d 341.[1] Community now argues not that this is the wrong law, but that the evidence failed to establish that Jacklyn met the criteria for proving a claim of negligent supervision.

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[1] The supreme court stated the pertinent criteria as follows:

> Before liability can be imposed upon a school board for failure to adequately supervise the safety of students, there must be proof of negligence in providing supervision and also proof of a causal connection between the lack of supervision and the accident. Id. "Injury from horseplay between discerning students which, at some stage may pose an unreasonable risk of harm to the participants, does not automatically and of itself render the supervising authority liable." Henix v. George, 465 So.2d 906, 910 (La.App. 2 Cir.1985). Furthermore, before a school board can be found to have breached the duty to adequately supervise the safety of students, the risk of unreasonable injury must be foreseeable, constructively or actually known, and preventable if a requisite degree of supervision had been exercised. Id.

Wallmuth, 01-1779 at p. 8, 813 So.2d at 346.

Here, the trial court found that Community was negligent in that there was no apparent supervision in the last minute of recess and this last minute is the most dangerous for abductions, for accidents when all the children are rushing back to class, and for fights. The trial court found a causal connection between the negligent supervision and the accident and noted that supervision could have prevented the accident. The record supports these findings, and they show that the trial court adequately considered the **Wallmuth** criteria.

Accordingly, we find no merit in Community's assignment of error that the trial court erred as a matter of law. Further, we conclude that the trial court was not manifestly erroneous in its factual findings.

DECREE

For the foregoing reasons, we affirm the judgment of the trial court. We issue this memorandum opinion in compliance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B. Costs of this appeal are assessed to Community Christian Academy, Inc., and Shelter Mutual Insurance Company.

AFFIRMED

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HUGHES, J., concurring.

I believe liability could also be based on the unused 4′ x 4′ wooden pole in the children's playground.