

IN THE COURT OF APPEALS OF IOWA

No. 8-944 / 08-0822
Filed May 29, 2009

AMBER SIMMONS, JEFF SIMMONS
and LOIS SIMMONS,
Plaintiffs-Appellant,

vs.

SIoux CITY COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

A plaintiff appeals from the district court's order granting summary judgment in favor of the defendant. **AFFIRMED.**

Robert Green, Sioux City, for appellant.

Sharese Manker of Klass Law Firm, L.L.P., Sioux City, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

In this appeal the plaintiff-appellant Amber Simmons claims the district court erred in granting summary judgment to the defendant-appellee Sioux City Community School District.

The undisputed facts before the district court reveal the following. On May 15, 2003, Simmons was a student at East High School in Sioux City. Shortly after 11:00 a.m., during a five-minute break between classes Simmons entered a classroom¹ and confronted and yelled at another female student. A police officer working as a liaison officer at the school removed Simmons from her next class and took her to the principal's office.

Sometime after noon on that day the police officer arrested Simmons for disorderly conduct and took her to a juvenile detention center. Simmons was allowed to contact her parents, but she was unable to reach them. She contacted her mother's aunt, who looked for and found Simmons's father. He went to the detention center and secured Simmons's release. No one from East High School contacted or attempted to contact Simmons's parents to advise them of her arrest.

Simmons sued the school district. As relevant to this appeal, she claimed the school district was negligent in not notifying her parents or either of them that she had been removed from school and detained at a juvenile detention center. The district court found as undisputed fact that no Iowa statute or administrative regulation required a public school to notify a parent of a student's arrest at

¹ The classroom was not the one in which Simmons had class the prior period or the one in which she was to have class the next period.

school, and that Simmons did not dispute the school district's assertion that no school district rule, policy, or regulation required the school district to notify a parent of disciplinary action for disruptive conduct. The district court concluded that any informal practice of notifying parents of disciplinary action was insufficient to create a legal duty that would support the claim of negligence.²

The district court granted the school district's motion for summary judgment, concluding in part that Simmons "has not set forth specific material facts in dispute showing a genuine issue for trial in regard to this 'duty' issue." Simmons appeals.

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Van Essen v. McCormick Enters. Co.*, 599 N.W.2d 716, 718 (Iowa 1999). Summary judgment will be upheld where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Van Essen*, 599 N.W.2d at 718.

While negligence actions are seldom capable of summary adjudication, the threshold question in any tort case is whether the defendant owed the plaintiff a duty of care. *Sankey v. Richenberger*, 456 N.W.2d 206, 207 (Iowa 1990). "Whether such a duty arises out of the parties' relationship is always a matter of law for the court." *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 801, 811 (Iowa 1994).

² On appeal Simmons does not challenge these findings as to the undisputed facts.

“The elements of a negligence claim include the existence of a duty to conform to a standard of conduct to protect others, a failure to conform to that standard, proximate cause, and damages.” *Van Essen*, 599 N.W.2d at 718.

In asserting that the district court erred, Simmons notes our supreme court’s statements that a school has “an affirmative duty to take all reasonable steps to protect its students,” and in doing so “must exercise the same care toward them as a parent of ordinary prudence would observe in comparable circumstances.” See *A. Doe v. Cedar Rapids Cmty. Sch. Dist.*, 652 N.W.2d 439, 446 (Iowa 2002) (citations and internal quotations omitted). She cites *City of Cedar Falls v. Cedar Falls Community School District*, 617 N.W.2d 11, 18 (Iowa 2000), and *Godar v. Edwards*, 588 N.W.2d 701, 708 (Iowa 1999), for the propositions that school districts have the “care and control of children” and must exercise the same standard of care toward them that a parent of ordinary prudence would observe in comparable circumstances. Simmons asserts that “any ‘reasonable parent’ would immediately respond to a child being taken to juvenile detention,” argues the school district therefore should have made every effort to notify Simmons’s parents that she had been taken to the juvenile detention center, and the district court therefore erred in concluding the school district owed Simmons no duty to so notify them.

We agree with Simmons that a school district has a duty of care toward a student as outlined in the cases she cites. Here, however, a police officer arrested Simmons and from that point forward she was not in the “care and control” of the school district, but was instead in the care and control of first the

arresting officer and later the juvenile authorities. We find no error in the district court's conclusion that under the circumstances involved in this case the school district did not have a duty to notify Amber's parents that she had been taken to a juvenile detention center.^{3, 4}

AFFIRMED.

³ We note that although those portions of the record contained in the appendix indicate school officials were aware of Simmons arrest and removal from the school, they in fact do not appear to indicate any knowledge on the part of school personnel that Simmons was to be taken to a juvenile detention center.

⁴ We need not and do not reach questions such as whether the school district not attempting to notify Simmons's parents can have been a proximate cause of any damages to Simmons when she was allowed to contact her parents, but was unsuccessful in her attempts to do so.