

LOUISIANA COURT OF APPEAL, SECOND CIRCUIT

Maria Mickens Green, Individually and as the Natural Tutrix of the
Minors, Joshua Evans, Makiya Mickens, Vernon Evans, Jr., Makayla
Evans, and Braxton Evans v. East Carroll Parish School
District/Board

No. 54,910-CA · No. 54,910-CA · Decided March 1, 2023

SUMMARY

The Louisiana Court of Appeal, Second Circuit, affirmed summary judgment for the East Carroll Parish School District/Board in a negligence action brought by Maria Mickens Green after she fell while transferring her wheelchair-using son from her vehicle at school. The court held that the school board’s duty to provide special transportation under the child’s Individualized Education Program did not extend to preventing Green’s injury when she voluntarily transported him herself. The court also upheld dismissal of the child’s related personal-injury claim and assessed appeal costs to Green.

CASE DETAILS

COURT	Louisiana Court of Appeal, Second Circuit
WRITING FOR THE COURT	Thompson, J.; Stone, J.; Stephens, J.
JURISDICTION	Louisiana Court of Appeal, Second Circuit
DECIDED	March 1, 2023
DOCKET	54,910-CA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a trial court judgment granting the school board's motion for summary judgment and dismissing the action arising from Green's fall while transporting her wheelchair-using child to school.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same criteria governing the district court's determination of whether summary judgment is appropriate.
PRECEDENTIAL VALUE	Published Louisiana Court of Appeal opinion; precedential under applicable Louisiana law.
PARTIES	Maria Mickens Green, individually and as the natural tutrix of the minors, Joshua Evans, Makiya Mickens, Vernon Evans, Jr., Makayla

TOPICS

negligence duty of care summary judgment standard of review appellate procedure

PRACTICE AREAS

Torts Civil procedure Education law Appellate procedure

QUESTIONS PRESENTED

1. Whether the timing of service of the school board's motion for summary judgment warranted reversal.
2. Whether the disputed fact of whether Green was notified that the wheelchair lift was inoperable was material to her negligence claim.
3. Whether the school board's duty to provide Joshua with special transportation and related services extended to protecting Green from injury while she voluntarily transported him in her personal vehicle.
4. Whether the record presented a genuine issue of material fact concerning the school board's negligence, causation, duty, or scope of duty.
5. Whether summary judgment properly dismissed Joshua's personal injury claim arising from Green's fall.

HOLDINGS

1. The timing of service did not require reversal because the motion was timely filed, Green had notice and appeared at the hearing, and she demonstrated no hardship or prejudice.
2. Whether the school board notified Green that the wheelchair lift was not operating was not a material fact because Green ultimately elected to transport Joshua herself and that fact did not affect the legal basis of her claimed recovery.
3. The school board's duty under Joshua's IEP to provide special transportation did not extend to protecting Green from injury while she voluntarily transported Joshua in her personal vehicle.
4. Green could not prove that the school board's conduct was the cause-in-fact of her harm because her injury resulted from her own decision to transport and unload Joshua, not from a risk for which the school board's transportation duty provided protection.
5. Joshua's claim was properly dismissed because the school board was not at fault for Green's fall, and no remaining theory established liability for injuries resulting from that fall.

KEY QUOTATIONS

"It is not necessary for the defendant to have foreseen the particular injury that occurred. A risk may be included in the scope of the duty if the injury is easily associated with other risks that are foreseeable." (at 11)

"Once Green elected to transport her children to school in her own vehicle, whether she would have preferred them to ride the bus or not, the school board did not owe a duty to her to prevent her from sustaining an injury while transporting her children." (at 13)

“We find that her injury is too attenuated from the school board’s duty to provide safe transportation for Joshua, pursuant to his IEP plan.” (at 14)

FACTUAL BACKGROUND

Joshua Evans, an eleven-year-old child with cerebral palsy who used a wheelchair, had an IEP providing for special transportation on a school bus equipped with a wheelchair lift. On September 6, 2016, the lift was not functioning, so his mother, Maria Mickens Green, drove Joshua and her other children to school. While removing Joshua from her vehicle and transitioning him into his wheelchair in the school parking area, Green fell backward, with Joshua falling on top of her, causing injuries. Green did not identify a parking-lot defect, did not request assistance from school personnel, and had regularly transported Joshua herself.

PROCEDURAL HISTORY

Green filed suit in the Sixth Judicial District Court for East Carroll Parish alleging that the school board's failure to provide required special transportation and related services caused her injuries and her children's losses. The trial court overruled her objection to the timing of service, granted the school board's motion for summary judgment, and dismissed the lawsuit. The Louisiana Second Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Minden Police Dep't, 351 So. 3d 880 (La. App. 2 Cir. 2022)
- Green v. Brookshire Grocery Co., 280 So. 3d 1256 (La. App. 2 Cir. 2019)
- Jackson v. City of New Orleans, 144 So. 3d 876 (La. 2014), cert. denied, 574 U.S. 869, 135 S. Ct. 197, 190 L. Ed. 2d 130 (2014)
- Peironnet v. Matador Res. Co., 144 So. 3d 791 (La. 2013)
- Bess v. Graphic Packaging Int'l, Inc., 331 So. 3d 490 (La. App. 2 Cir. 2021)
- Schultz v. Guoth, 57 So. 3d 1002 (La. 2011)
- Chanler v. Jamestown Ins. Co., 223 So. 3d 614 (La. App. 2 Cir. 2017), writ denied, 228 So. 3d 1230 (La. 2017)
- Bufkin v. Felipe's La., LLC, 171 So. 3d 851 (La. 2014)
- Chreene v. Prince, 256 So. 3d 501 (La. App. 2 Cir. 2018)
- Carroll v. Allstate Ins., 244 So. 3d 772 (La. App. 2 Cir. 2017)
- Gullette v. Caldwell Par. Police Jury, 765 So. 2d 464 (La. App. 2 Cir. 2000)
- Roberts v. Benoit, 605 So. 2d 1032 (La. 1991)
- Richardson v. Lloyds, 136 So. 3d 953 (La. App. 2 Cir. 2014)
- Forest v. State, Through La. Dep't of Transp. & Dev., 493 So. 2d 563 (La. 1986)
- Pillow v. Entergy Corp., 828 So. 2d 83 (La. App. 2 Cir. 2002), writ denied, 831 So. 2d 987 (La. 2002)

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