

Tort Law: Negligence

Case 13:
Fireworks
at School

Nicholson v. Bd. of Educ. of the City of New York

School District's Liability for Criminal Acts of Third Persons on School Grounds

OBJECTIVE

To understand a school's liability for injuries that occur on school grounds after school hours.

TOPICS COVERED

- Municipality's duty of care to maintain school playgrounds
- Municipality's liability for criminal activities on school playgrounds
- Municipality's duty to provide supervision on school playgrounds

CASE: 13

Nicholson v. Bd. of Educ. of the City of New York

School District's Liability for Criminal Acts of Third Persons on School Grounds

BACKGROUND

- Brian Nicholson, a 7-year-old boy, lived across the street from elementary school Public School 94, in Brooklyn, New York. On the day in question, Brian walked across the street around 4:30 pm and sat down in a corner of the school yard.
- At that time, ten other children, each about 12 years of age, were playing with fireworks in the schoolyard. One of the children called Brian's name. When Brian turned around, he was hit in the left eye by a firecracker. After several successive operations, the eye was removed and an artificial one put in its place.
- Brian, through his mother, Margaret Nicholson, brought an action against the Board of Education for the City of New York for the injuries sustained from the criminal activity, i.e., setting off fireworks, an illegal activity in New York at the time of the incident.

BEFORE YOU BEGIN

- What is a municipality's duty of care to persons using its parks and playgrounds?**

A municipality is under a duty to maintain its parks and playground facilities in a reasonably safe condition.

- What is a municipality's liability to injured parties caused by criminal activities at public playgrounds?**

A municipality that is aware people are using its park or playground as a site for criminal activities needs to take appropriate preventative measures to protect others from harm. If it fails to do so, the municipality will be liable for resulting injuries.

- What is a municipality's duty of care regarding supervision of parks and playgrounds?**

A municipality may be obligated to have an adequate degree of general supervision and regulation to prevent activities by park visitors that endanger other visitors.

ISSUE BEFORE THE COURT

Whether a municipality, aware that its playground is being used by children as a site for the unlawful discharge of fireworks, is liable for resulting injuries when it fails to take appropriate preventative measures.

THE FACTS

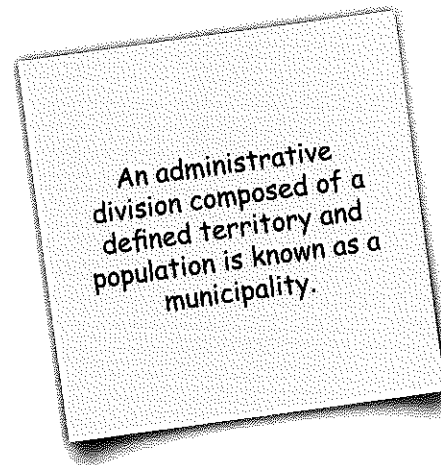
In June 1968, at about 4:30 pm, 7-year-old Plaintiff Brian Nicholson, walked across the street into the school yard at elementary school P.S. 94 in Brooklyn, New York. Brian sat down in a corner to watch the “big” kids play. He was not a student of P.S. 94, nor of any formal after-school program conducted by the school. The school playground was across the street from where Brian lived.

At the time Brian entered the playground, ten other children, each about 12 years of age, were playing with fireworks. Brian heard his name called, and when he turned around, a firecracker hit him in the left eye. After several operations, the eye was removed and an artificial one replaced it.

The school yard was not run as an official, supervised area for after-school play. The Defendant, the Board of Education for the City of New York, did not assign school personnel to supervise play. Nevertheless, young children in the neighborhood, a congested tenement house area, played at P.S. 94 after school, as it was the closest playground to their houses. The school yard was separated from the public sidewalk by a high metal fence. However, the gates of the fence had been missing for years.

For two years prior to Brian’s injuries, the Defendant had received constant warnings that people were exploding firecrackers, setting papers on fire, and throwing bottles and garbage in the schoolyard. These destructive episodes became more frequent during April and May, the two months preceding Brian’s injury. To combat this behavior of fireworks, fire, and garbage, members of the Block Association met with the principal to request that gates be installed to close the school yard or that supervision be provided. The principal honored neither request.

The Plaintiff sued the Defendant for money damages resulting



from his injuries and argued that the Defendant was negligent in allowing the children on school grounds where it knew or should have known that the kids were lighting fireworks.

The Defendant argued that because the accident took place in a school yard, rather than a public park, there was no duty to the Plaintiff except to prevent an intentional wrongful act. It also argued that its duty was limited to maintaining the yard in physically good condition.

Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Nicholson v. Board of Educ. of the City of New York, 36 N.Y.2d 798, 369 N.Y.S.2d 703 (1975).
New York Court of Appeals

April 7, 1975. Opinion written per curiam by the Honorable Justices Charles D. Breitler, Matthew J. Jasen, Domenick Gabrielli, Jones, Solomon Wachtler and Lawrence Cooke.

NAME

DATE

Review the Case

After reading Nicholson v. Bd. of Educ. of the City of New York, answer the following:

1. Identify the Plaintiff(s) in the case.

2. Identify the Defendant(s) in the case.

3. Is the Plaintiff seeking money for his injuries in this case?

4. What were Brian's injuries?

5. Why did Brian go to the playground the day of the incident?

6. Was Brian a student at the school?

7. What age was Brian when he was injured? How old were the other children in the playground?

8. What time did the incident occur?

9. Where was Brian's house in relation to the playground?

CASE: 13

Review the Case (continued)

10. Were there any prior incidents of fireworks being lit off at the playground? Explain.

11. Describe the neighborhood surrounding the school.

12. Did the principal have knowledge of the childrens' fireworks activity? Explain.

13. Were there gates around the school yard at the time of the incident?

14. Did the Block Association ever meet with the principal regarding the playground? If yes, what did the Block Association request?

15. BONUS: What could the Board of Education have done to prevent this accident?

Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did the Board of Education owe a duty of care to Brian Nicholson? Explain.

2. Was the duty of care breached by the Board of Education for failing to take adequate precautions to protect Brian Nicholson? Explain.

3. Was it foreseeable to the Board of Education that if they failed to take adequate precautions to protect minor children, like Brian, in the playground, someone would get hurt? Explain.

4. Was the Board of Education's failure to take adequate precautions to prevent fireworks at the school yard the cause of the injury to Brian Nicholson? Explain.

5. What were Brian's injuries?
