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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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Delivered: 27/11/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

TIMOTHY WALKER

Plaintiff;

-and-

SOUTHERN EDUCATION AND LIBRARY BOARD

Defendant.

MAGUIRE J

Introduction

[1] The plaintiff in this case is Timothy Walker. He is now 22 years of age, having been born on 1 May 1997. When he was aged 15 years and around 9 months, the plaintiff was injured in an accident on 26 February 2013 at 14.10 hours or thereabouts. At that time he was at Newtownhamilton High School and a physical education lesson was just about to begin in the first period after lunch.

[2] The group engaged in the PE lesson were all boys - probably around 15 of them. The teacher in charge was a Mr Black. At 13.50 hours the boys were to assemble and change at the changing rooms. This involved them putting on their rugby kits, including rugby boots. The boots, as is usual, were fitted with six half inch studs. These studs are an uncertain platform upon which to walk on hard surfaces. Once the boys had changed they were told by Mr Black to put their boots on outside the changing room in a hard area to the front of it. There they were to wait until the teacher unlocked the gate which led to a path which would take them to the rugby pitch.

[3] As the boys started leaving the changing room as instructed, a couple of boys arrived late and Mr Black stayed with them, as they changed, with a view to locking up the changing room.

[4] In the area between the changing room and the gate to the path to the rugby pitch, to the right was an enclosed hard surface play area which was known locally as the "tennis courts". This area, which had the size of approximately two tennis courts, was used extensively by pupils at the school, particularly at break times and lunch times. The tennis courts could be accessed by a gate in the fence which generally, as on this occasion, was open.

[5] While waiting for the "late" boys and Mr Black to arrive, the plaintiff and a friend of his, Kelvin McNeice, made their way into the tennis courts area where they ran about and engaged in what was described at the hearing as friendly "horseplay". They should not have done this but nonetheless did.

[6] What happened next was described to the court by the plaintiff but it was also, at least in part, captured on CCTV pictures. The camera in question was located close to the changing room itself and the relevant part of the coverage was shown in court.

[7] What the CCTV pictures show was the two boys running around in the tennis courts area. They were the only persons in this area. At one stage the two began to walk back towards the gate out of the tennis courts. The plaintiff was closest to the gate and was moving backwards towards it facing Kelvin McNeice. By this time the plaintiff was either walking fast or running slowly. The boys were close together. As the plaintiff reached at or about what appears to be a white line or lines on the tarmacked surface he fell backwards onto the ground. Why he did this is not clear but his fall seemed to be abrupt. One possibility is that in the banter going on between him and Kelvin, the latter (not in a hostile way) pushed him down on to the ground, though in his oral evidence the plaintiff was adamant that there was no push. If this is correct, it rather looks like the plaintiff lost his footing as he was travelling backwards and fell. The court cannot be certain of the precise sequence of events but it seems probable that the fall started within the area defined by a white line and was not a slip but something more in the nature of a loss of balance.

[8] In the plaintiff's version of events, he described the fall as having occurred when his feet "left him". This might suggest a slip but to the best of the court's assessment the better view, aided by the CCTV pictures, is that what was responsible for the fall was some form of misstep on the plaintiff's part.

[9] The plaintiff placed the point of his fall as being beyond the parameters of the white markings on the surface and close to the adjacent fence. However, the court is doubtful that this is correct, as the CCTV pictures appear, to the court's eye, to place him, just before the fall, within the outside white line.

[10] At all events, the plaintiff fell and hurt himself.

[11] What the CCTV also shows is that within moments of the plaintiff's fall boys are seen heading from the direction of the changing rooms towards the tennis courts. Notably one (identified as one of the late boys) is seen carrying a large sports bag containing rugby gear. In his oral evidence, Mr Black said that while he is not seen on the CCTV pictures before the court, he was following behind the "late" boys. He said that as he moved forward he saw the plaintiff and Kelvin in the tennis courts area and shouted out at them "what are you two idiots doing up there?" When Mr Black got closer, he saw the plaintiff on the ground and spoke to him. The plaintiff told him that he had slipped but Mr Black did not see any substance on which the plaintiff had slipped. In particular, Mr Black, contrary to the plaintiff's account, did not see mud in the vicinity and in particular did not see skid marks in the mud, which formed a key part of the plaintiff's account by way of explanation as to why the accident occurred. In the plaintiff's account, his fall was as a result of slipping on accumulated mud which occupied a strip of some three feet from the fence line for the full length of the area beyond the gate into the tennis courts. Mr Black's evidence was that this strip of mud not only did not cause the accident but was not there at all.

[12] Eventually the plaintiff was taken to hospital by his mother. First he was taken to Tower Hill Hospital, Armagh, and then to Craigavon Hospital. The medical records of those attendances were placed before the court because of what they had to say about how the accident happened. In a record timed at 15.35 hours the account of the accident recorded was to the effect that the plaintiff's accident occurred when he "was running on to pitch"; at Craigavon Hospital there was in their records a reference to the plaintiff "walking to rugby pitch" when he turned round and went over on his ankle. There is a further record from Tower Hill Hospital which also refers to him "running onto pitch" at the time of the accident. It seems likely that the plaintiff was the source of these statements, as he was the only person who witnessed the accident who had gone to the hospital, but whether what they convey is accurate is open to doubt. The court does not consider that it needs to resolve this conflict of fact one way or the other. Nor does the court consider it needs to resolve factual disputes which allegedly arose at a later date between the plaintiff's father and members of the school staff about the contents of the accident report and about the state of the area in front of the changing rooms, in particular, a manhole, which is not shown on the CCTV pictures, not on the day of the accident but later when the father was visiting the school at a unspecified time after the accident.

[13] Much of the dispute at the hearing related to the state of a part of the tennis courts at the time of the accident. This was linked to the question of whether mud on the ground was the cause of the accident. As already indicated, the parties were in total dispute about this. However, the court considers that there are four points which, in its view, tend to favour the school's account. Firstly, the school acknowledges that some time before the plaintiff's accident there had been a

problem at the tennis courts in relation to drainage and the ingress of slippery material resulting in a number of slips occurring. But Mr Black did not waver in his view - as the PE teacher - that this problem had been resolved about a year before the date of the accident. Secondly, there was no reference in the accident report form compiled immediately after the accident of any complaint about or the presence of slippery substances on the tennis courts. The account of the accident which is found in the accident report form derives from an interview after the accident with the plaintiff's friend, Kelvin (who was not called by either side as a witness in these proceedings). Kelvin stated that he thought that it was the studs of the plaintiff's football boots which caught on the ground and caused the accident. The author of the report notably makes no reference to the state of the tennis courts, save to say that their surface consisted of tarmac. Undoubtedly, as the evidence of Mr Trevor Wright, a consulting engineer called on behalf of the school, demonstrated, walking on hard surfaces in rugby boots does present difficulties with the stability of the walker, unless care is taken. Thirdly, the court could not see anything on the CCTV pictures which supported the plaintiff's account, though it is accepted that this point could be reasonably viewed as of limited value, as the court cannot say definitely that there was no mud present, though it may be thought that if there was as much mud present as the plaintiff believes, there would be some sign of it. Fourthly, the court believes that if the plaintiff's account was correct there should have been, in connection with the length of mud the plaintiff said ran down the side of the tennis courts, a range of marks from other people playing at the site at break time and/or lunch time that day. Instead, on the plaintiff's account, the only marks he identified were two skid marks made by him, which Mr Black did not see.

Assessment

[14] The court is unpersuaded by the evidence of the plaintiff that this unfortunate accident occurred in the way the plaintiff has described. While it accepts that the accident occurred as shown on the CCTV pictures, the court is not satisfied that the cause of the accident was either a failure of supervision by Mr Black and/or the presence of mud down the side of the tennis courts (some 3 feet in width) upon which the plaintiff said he slipped.

[15] As regards supervision, the court accepts that Mr Black owed a duty to the pupils to take reasonable care of them and generally to carry out reasonable supervision. But on the facts of this case the court is of the opinion that the events of this accident do not portray a breach of this duty. In the court's opinion, the matter must be placed in its due context. The pupils in question were in their fifth year at the school and were aged 15/16. They will all have played rugby before and have been used to the routine of changing, putting on their boots outside the changing room and walking or jogging to the pitches. The plaintiff plainly knew why Mr Black had been delayed - due to the late comers. When he and his friend went off into the tennis courts the plaintiff knew he was acting contrary to the set routine. In the course of cross-examination the plaintiff conceded that his actions on the day running around the tennis courts in his rugby boots were foolish. In these

circumstances, it would, in the court's opinion, be placing too high a standard of care on Mr Black to say that he should have dealt with the late arrivals or the plaintiff's group differently. The court accepts that Mr Black had to lock up the changing rooms and also accepts that many of the pupils had left the changing room at the time when the late pupils arrived. In these circumstances, Mr Black, in the court's estimation, was entitled to believe that his pupils were not going to place themselves in any serious danger in the short period it would take (perhaps 3 to 5 minutes) while the pupils were outside awaiting the latecomers and Mr Black joining them. In any event, the court is of the opinion that the tennis courts area was not in itself a hazardous area.

[16] After all, a large number of pupils at the school were playing in the tennis courts area that very day, at break and lunch times.

[17] As regards the presence of mud within the tennis courts area, the court is of the view that the plaintiff has not evidentially proved this case and, as a finding of fact, the court is of the view that there were no significant hazards of this type in that area at the time, on the balance of probability, though there may well have been mud there just over a year before.

Conclusion

[18] The court dismisses the plaintiff's claim, while having sympathy for the pain, suffering and inconvenience sustained by the plaintiff which resulted from the accident.

[19] If the court had found for the plaintiff, it would have valued the claim at £35,000, though, in that event, there would probably have been a finding of contributory fault on the plaintiff's part.

[20] The court expresses its gratitude to Mr Keenan QC and Mr Rory Fee BL for the plaintiff, and Mr Thomas Fitzpatrick BL for the defendant, for their economical and helpful submissions.