DONALD A. CADORETTE and LYNEE CADORETTE, as parents and next friend of MICHAEL TODD CADORETTE,	)	
Plaintiffs/Appellants	)	NO. 01A01-9510-CV-00441
v.	)	
SUMNER COUNTY BOARD OF EDUCATION and SUMNER COUNTY, TENNESSEE,	)	Sumner Circuit No. 12734-C
Defendants/Appellees	)	

FILED

April 19, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT OF SUMNER COUNTY

AT GALLATIN, TENNESSEE

THE HONORABLE THOMAS GOODALL, JUDGE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

OPINION

Todd Cadorette suffered a head injury on April 15, 1993, during an art class at Beech High School in Sumner County, Tennessee. The accident occurred when Todd fainted and fell off of a table he was standing on while modeling for other students. We agree with the trial court's conclusion that Cadorette's teacher was not negligent in permitting him to model for the class as he did. We therefore affirm the decision of the trial court.

The Facts

On the day of his fall, Todd's art teacher, Vicki Yeary, sought a volunteer to stand up on a four foot high table and model for the class. Todd, a fifteen year old ninth-grade student, agreed. Ms. Yeary instructed Todd to stand on the table while trying, "not to move too much," with his hands in his pockets. Todd stood on the desk for approximately ten minutes, but proceeded to faint and fall off the desk, injuring his head when he landed on the classroom floor.

Ms. Yeary, Todd's instructor, had been a teacher for twenty-five years, including twenty-four in the Sumner County School System. She testified that she had used this modeling technique throughout her career and had been taught the method herself in college. Todd had never modeled prior to the accident, and by

all accounts was a very healthy young man. When Todd fell, Ms. Yeary was instructing a student on the other side of the room, and was not close to Todd.

Pursuant to *Tenn. Code Ann.* § 29-20-101 *et seq.*, Todd's parents filed an action on his behalf in the Circuit Court for Sumner County against the Sumner County Board of Education, as well as Sumner County. The Cadorette's alleged in their complaint, filed on March 3, 1994, that Todd's injury resulted from the negligence of his teacher. In accordance with *Tenn. Code Ann.* § 29-20-307, a bench trial ensued on June 19, 1995. At trial expert medical testimony indicated that Todd's blackout was the result of reduced blood flow to the brain caused by his still pose and locked knees. The court found however, that the Defendants were not negligent as the accident was not foreseeable. The court dismissed the matter, and this appeal followed.

The Negligence of School Officials in Tennessee

Since the essential facts in this case are not in dispute, the questions raised by this appeal relate chiefly to the application of law to those facts. As the trial court heard this case without a jury, our review is governed by Tenn.R.App.P. 13(d) which instructs us to review the record *de novo* with a presumption that the trial court's findings of fact are correct. Additionally, this Court must "affirm the trial court's decision unless an error of law affecting the result has been committed or

unless the evidence preponderates against the trial court's findings of fact." *Roberts v. Robertson County Bd. of Education,* 692 S.W.2d 863, 865 (Tenn.App. 1985).

Sumner County's liability in this matter is governed by the Tennessee Governmental Tort Liability Act, ("TGTLA") T.C.A. § 29-20-101 *et seq.* In order to establish liability on the part of Sumner County under the TGTLA for any damages in this lawsuit, it is the Appellant's burden to prove the following elements: (1) the duty of care owed by the Defendant to the Plaintiff; (2) conduct on the part of the Defendant falling below the applicable standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; (5) proximate or legal cause. *Bradshaw v. Daniel,* 854 S.W.2d 865, 869 (Tenn. 1993).

As to proximate causation a three-pronged test requires that: (1) the tortfeasor's conduct must have been a "substantial factor" in bringing about the harm being complained of; and (2) there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in harm; and (3) the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence. *McClenahan v. Cooley,* 806 S.W.2d 767, 775 (Tenn. 1991).

A. *Duty*

This Court begins its assessment of negligence claims by

reviewing whether the defendant owed a duty to the Plaintiff. *Lancaster v. Montesi,* 390 S.W.2d 217, 220 (1965). The existence or non-existence of a duty owed to the Plaintiff by the Defendant is entirely a question of law for the court. *Bradshaw v. Daniel,* 854 S.W.2d 865, 869 (Tenn. 1993). If the trial court decides that a duty exists, "it may proceed to determine whether the defendant's actions or failure to act breached this duty and whether these actions or inactions were the proximate cause of the plaintiff's injury." *Roberts v. Robertson County Bd. of Educ.,* 692 S.W.2d 863, 870 (Tenn.App. 1985).

While school teachers and administrators have a duty to supervise their students in order to protect them from injury, the fact that an injury to a student has occurred does not, in and of itself, prove that a teacher's supervision was negligent. *See Brackman v. Adrian*, 472 S.W.2d 735, 739 (Tenn.App. 1971). Further, "[t]eachers and local school districts are not expected to be insurers of the safety of students while they are at school. *Roberts v. Robertson County Bd. of Education,* 692 S.W.2d 863, 870 (Tenn.App. 1985); *citing Ankers v. District School Board of Pasco Co.,* 406 So.2d 72,73

Negligence can be established only upon a showing that the teacher's or supervisor's actions amounted to a deviation from what a reasonable and prudent person would do under the same or similar circumstances. *See Groce Provision Co. v. Dortch,* 350 S.W.2d 409, 413 (Tenn.App. 1961). Simply stated, there is no liability for the results of an accident that could not have been foreseen by a reasonably prudent person. *Brackman v. Adrian*, 472 S.W.2d 725, 739 (Tenn.App. 1971). However, an adult's standard of care toward children should be tempered by the recognition of children's impulsiveness and inexperience. *Roberts v. Robertson*

County Bd. of Education, 692 S.W.2d 863 (Tenn.App. 1985); *citing Townsley v. Yellow Cab Co.,* 237 S.W. 58 (1922). We believe that Ms. Yeary owed Todd Cadorette, as well as all of her pupils, a duty to act reasonably under the circumstances. More specifically, in order for Ms. Yeary to discharge this duty she must instruct and supervise her students in a manner which recognizes their age and maturity.

After the trial court determines that the defendant owed the plaintiff a duty, then it must be proven that the defendant's actions or inaction constituted a breach of that duty. The failure of proper supervision of students is not sufficient to fix liability on the school unless it is also shown that such failure was the proximate cause of the plaintiff's injuries. *Brackman v. Adrian,* 472 S.W.2d 735, 739 (Tenn.App. 1971). The "ultimate question" however, and the final element of proof in a negligence action is the issue of causation. *Roberts v. Robertson County Bd. of Education,* 692 S.W.2d 863, 871 (Tenn.App. 1985). *McClenahan v. Cooley,* 806 S.W.2d 767, 774 (Tenn. 1991).

B. *Proximate Cause*

The Supreme Court of Tennessee has defined proximate causation as:

> [t]hat act or omission which immediately causes or fails to prevent the injury; an act or omission occurring or concurring with another which, if it had

not happened, the injury would not have been inflicted.

Roberts v. Robertson County Bd. of Education, 692 S.W.2d 863, 871 (Tenn.App. 1985); *citing Tennessee Trailways, Inc. v. Ervin,* 222 Tenn. 523, 528, 438 S.W.2d 733, 735 (1969). As long as the defendant's conduct is a substantial factor causing the injury, it need not be the sole cause or even last act prior to the injury. *Roberts v. Robertson County Bd. of Education,* 692 S.W.2d 863 (Tenn.App. 1985).

As this Court stated in *Roberts v. Robertson County Bd. of Education:*

> Foreseeability is an essential element of the proof of proximate causation. If the injury giving rise to the action could not have been reasonably foreseen or anticipated, there is no proximate cause. However, this foreseeability requirement is not so strict as to require that a defendant must foresee the exact manner in which an injury takes place. The requirement is met as long as it has been determined that the defendant could foresee, or through the exercise of reasonable diligence should have foreseen, the general manner in which the injury occurred.

692 S.W.2d 863, 871 (Tenn.App. 1985); *citing Wyatt v. Winnebago Industries, Inc.,* 566 S.W.2d 276, 281 (Tenn.App. 1977).

Further, "[t]he harm must be foreseeable from the vantage point available to the defendant at the time that the allegedly negligent conduct occurred. *Wingo* v. Sumner Co. Bd. of Educ., No. 01-A-01-9411-CV-0051, 1995 WL 24133327 (Tenn.App. April 26,

1995). Also, "with specific reference to the conduct of teachers, we do not impose upon them the duty to anticipate or foresee the hundreds of unexpected student acts that occur daily in our public schools. *Roberts v. Robertson County Bd. of Education,* 692 S.W.2d 863 (Tenn.App. 1985); *citing Verhel v. Independent School District No. 709,* 359 N.W.2d 579, 586 (Minn.1984).

Triers of fact decide negligence cases "in light of their knowledge of how reasonable persons act in the same or similar circumstances." *Kelley v. Johnson,* 796 S.W.2d 155, 158 (Tenn.App. 1990). Their decisions are not only based upon factual matters but also on mixed considerations of logic, common sense, public policy, and precedent. *Id., citing Wyatt v. Winnebago Indus., Inc.,* 556 S.W.2d 276, 280 (Tenn.App. 1977).

Finally, "[t]he degree of foreseeability needed to establish a duty of care decreases in proportion to the magnitude of the foreseeable harm. As the Tennessee Supreme Court stated in *Pittman v. Upjohn Co.:*

> As the gravity of the possible harm increases, the apparent likelihood of its occurrence need be correspondingly less to generate a duty of precaution.

890 S.W.2d 425, 433 (Tenn. 1994) *citing Prosser and Keeton on the Law of Torts,* Sec. 31, at 171 (5th ed. 1984).

C. *Analysis*

Ms. Yeary taught art classes for 25 years, and studied art as a college student. In her tenure she estimated that nine-hundred to one thousand high school students like Todd Cadorette modeled on tables in her classrooms. Ms. Yeary testified that she had never known a subject to faint as Cadorette did. This court readily concedes, as the trial court did, that proof that a person acts in a manner that is consistent with custom, or a long-standing practice, does not necessarily mean that their action is not negligent. Thus, the fact that modeling on tables might be widespread practice in high school art classrooms in Tennessee does not prevent us from deciding she was negligent.

In examining the record we note that the injury in this suit did not involve a dangerous instrumentality as it did in the *Roberts v. Robertson County Bd. of Education* case. In *Roberts,* a student was seriously injured when a bit from a drill press struck him in the head after being improperly used by an unsupervised classmate. Here, we have an outgoing and vigorously healthy fifteen year old who volunteered to stand on a table and model for his art class. Their is no evidence that the table was unsteady, nor is there any proof that Todd Cadorette indicated to his teacher that he was in any way ill, or physically unable to perform the task. Even after taking into consideration the fact that Cadorette stood on a four foot high table, thereby increasing the "gravity of the possible harm," we cannot say that a "falling type injury," is foreseeable when viewing the record as a whole.

As to Ms. Yeary’s knowledge at the time of the fall the record contains two statements indicative of her perception of the situation. The first was her deposition where she was asked:

Question: "But it’s your testimony that your general

conversation to student models includes your telling them to -- what did you say? To let you know if they were having any problems?

Answer: "If they feel anything, but no one has ever done that, but yes, a child could get up there and feel faint or something."

At trial Ms. Yeary was asked:

Question: "When you instructed Todd to stand up on the table, you knew that a child could get up there and faint didn't you?

Answer: "Not necessarily, no sir."

The Appellant argues that Ms. Yeary's trial testimony demonstrates her awareness of the danger posed to Cadorette. We believe her testimony contemplates the physical possibility of a fall, but not the *reasonable foreseeability* or *probability* required for liability to result. Ms. Yeary had been a art instructor for approximately 25 years and had used this technique throughout her tenure. In her experience, nothing like the accident which injured Cadorette had ever happened to her. At trial expert medical testimony explained the phenomena which caused Todd Cadorette to faint, that is that his locked knees prevented the normal flow of blood to the head. While comprehending this expert testimony is not too difficult for a layman, we do not think it can be considered to be a matter of common knowledge.

The question of whether Cadorette's fall was foreseeable is a legal one. Thus, after reviewing the record *de novo,* this Court

concludes that the evidence supports the trial court's finding that Ms. Yeary was not negligent in permitting Todd Cadorette to stand on a four foot high table in order to provide a model for an art class. We specifically here state that our decision is made exclusive of Ms. Yeary's testimony at trial regarding the practices of art instructors in other school systems near Sumner County.

Conclusion

The judgment of the trial court is affirmed. Costs on appeal are taxed to the Appellants and the case is remanded to the trial court for any additional proceedings.

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SAMUEL L. LEWIS, J.

CONCUR:

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HENRY F. TODD, P.J., M.S.

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WILLIAM C. KOCH, JR., J.