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2018 IL App (3d) 170690-U

Order filed September 24, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

NOAH RYAN HAWK ROGERS, PATRICK ROGERS and DANIELE ROGERS, Plaintiffs-Appellants, v. ANDREW MCCONNAUGHAY, ANDY WALSH, LANCE THURMAN, MIKE NEISLER, MATT KOEPPEL, MATTHEW HURLEY, ANDREW WISE and OLYMPIA COMMUNITY UNIT SCHOOL DISTRICT 16 BOARD OF EDUCATION, Defendants (Andy Walsh, Lance Thurman, Mike Neisler, Matt Koeppel, Matthew Hurley, Andrew Wise and Olympia Community Unit School District 16 Board of Education, Defendants-Appellants).	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois. Appeal No. 3-17-0690 Circuit No. 15-L-15 The Honorable Michael D. Risinger Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in granting judgment notwithstanding the verdict to school district employees and school board on claims of (1) willful and wanton negligence

in supervision where defendants had no notice that high school student would attack middle school student in hallway; and (2) willful and wanton spoliation of evidence where student eyewitness statements were incorporated into other retained records, and there was no evidence that defendants purposely destroyed statements.

¶ 2 Plaintiffs Noah Ryan Hawk Rogers and his parents, Patrick Rogers and Daniele Rogers, filed a complaint against defendants, employees of Olympia Community Unit School District 16 and its Board of Education, alleging willful and wanton negligence in supervision and willful and wanton spoliation of evidence. A jury trial was held, and the jury found in favor of plaintiffs. Defendants filed a motion for judgment notwithstanding the verdict (*n.o.v.*) or a new trial. The trial court granted defendants' motion for judgment *n.o.v.* Plaintiffs appeal the trial court's order granting defendants' motion. We affirm.

¶ 3 FACTS

¶ 4 On November 8, 2011, plaintiff Noah Ryan Hawk Rogers, a seventh grader at Olympia Middle School, was attacked and severely beaten by defendant Andrew McConnaughay, a sophomore at Olympia High School. The attack took place during the last few minutes of the students' respective gym classes in a hallway outside the high school gymnasium that is used by both middle school and high school students.

¶ 5 Noah's gym teacher was Mike Neisler, and McConnaughey's gym teacher was Matt Koeppel. Andy Walsh was the principal of Olympia Middle School; Lance Thurman was the principal of Olympia High School; Matthew Hurley was the assistant principal and dean of students at Olympia High School; and Andrew Wise was Olympia School District's hearing officer and Freedom of Information Act (FOIA) officer. All were employees of Olympia Community Unit School District 16.

¶ 6 In 2016, Noah and his parents filed an eight-count complaint against McConnaughay, Walsh, Thurman, Neisler, Koeppel, Wise and Hurley, and the Olympia Community Unit School

District 16 Board of Education (school board). The complaint alleged battery against McConnaughay, willful and wanton negligence against Walsh, Thurman, Neisler, Koeppel, and the school board, and willful and wanton spoliation of evidence against Walsh, Thurman, Hurley, Koeppel, Neisler, Wise and the school board. Plaintiffs later dismissed their battery claim against McConnaughey, leaving the school board and school district employees as defendants. Defendants filed a motion for summary judgment, claiming that tort immunity defeated plaintiffs' claims. The trial court denied the motion, and the case proceeded to trial.

¶ 7 At trial, Noah testified that he was one of the last 5 to 10 boys to come out of the locker room at the end of his gym class on November 8, 2011. When he came out of the locker room, he lined up in the hallway adjacent to the swimming pool, known as the "pool hallway," with the other students from his gym class. He was at the back of the line, while his gym teacher, defendant Mike Neisler, was at the front of the line, leading the students back to the middle school. While Noah stood at the back of the line, McConnaughay came into the pool hallway from the high school gymnasium and asked where his brother, a seventh grader, was. Noah responded with a vulgar comment, and McConnaughay struck him from behind in the back of his head. When Noah turned around, McConnaughay hit him in the face, grabbed him, and slammed his head into a wall. Noah does not know what happened after that but remembers waking up to the school nurse shining a flashlight in his eyes while he was on the floor in the pool hallway. Noah had never met McConnaughay before November 8, 2011.

¶ 8 Matt Koeppel, McConnaughay's gym teacher, testified that he had released his students to change their clothes in the locker room 7 to 10 minutes before the attack. Koeppel was standing in the center of the high school gym waiting for his students to return from the locker room when he heard screaming and yelling in the pool hallway. When he turned around to see

what was happening, he saw McConnaughay standing over and straddling Noah. Koeppel sprinted toward McConnaughay, yelling, "Stop!" and "Get off!" When he was halfway there, he made eye contact with McConnaughay, who took off running.

¶ 9 Koeppel testified that he never saw McConnaughay hit Noah. He believed that the beating stopped when McConnaughay made eye contact with him and ran. A few seconds after Koeppel reached Noah, Neisler arrived. Koeppel made sure that Neisler could take care of Noah and then went after McConnaughay. Koeppel found McConnaughay in the school office. After that, Koeppel retrieved Terry Lynn Wood, Noah's grandmother, from the school cafeteria, where she was working, and took her to Noah.

¶ 10 Wood testified that as Koeppel walked with her to the pool hallway to see Noah, he said, "I was only gone a few minutes." Koeppel did not recall saying that to Wood. Wood stayed with Noah in the pool hallway until the paramedics arrived.

¶ 11 Neisler testified that on November 8, 2011, his gym students lined up in the pool hallway after getting dressed in the locker rooms, as they did every day at the end of gym class. Once the students were lined up, he went to the front of the line and walked them back to the middle school by leading them from the pool hallway to another hallway known as the "ag hallway." When Neisler was approximately 35 feet down the ag hallway, two to four of his students ran up to him and told him there was a fight at the end of the line. When the students told him the fight involved a seventh grader and a high school student, Neisler and the students "hustled back to where Noah was." When Neisler reached Noah, Koeppel was already there.

¶ 12 Neisler estimated that he had been walking with his students from the pool hallway down the ag hallway for approximately 30 seconds before students told him about the attack on Noah.

He believed he was out of eyesight range of Noah for less than one minute. Neisler had no notice or warning that the assault was going to happen.

¶ 13 Several students in Noah's gym class testified. Kyle Schmidt estimated that McConnaughay's attack on Noah was "pretty quick," lasting three to four minutes. He said the attack ended when a high school student retrieved Koeppel from the gym. Matthew Sarver testified that after Noah fell to the ground and McConnaughay jumped on top of him and started beating him, he ran to get Neisler. Sarver found Neisler near the end of the ag hallway and ran with Neisler back to Noah. When they arrived, Noah was still on the ground, and McConnaughay was gone. Sarver estimated that six to seven minutes passed from the time Noah was attacked until he and Neisler got back to him. At his deposition a year earlier, Sarver estimated that McConnaughay's attack on Noah lasted three to four minutes.

¶ 14 Hunter Schuerman testified that he witnessed the entire altercation and saw McConnaghay walk casually back into the gym after he stopped hitting Noah. After that, Schuerman and some other students ran to get Neisler and found him about three-fourths of the way down the ag hallway. Schuerman estimated that McConnaughay's attack on Noah was "pretty quick" and lasted about two-and-a-half minutes. Nathan Schulz also testified that he witnessed the attack and said it ended with Andrew walking into the high school gym. After that, Schulz ran to get Neisler and found him at the end of the ag hallway. He testified that it "all happened so quickly" and estimated that the assault lasted approximately two to five minutes. Shulz testified that he had never seen a fight like that before nor since.

¶ 15 Kalvin Byrd testified that he was walking at the front of the line near Neisler and was just past the end of the ag hallway when two to three students ran up and told Neisler that Noah was getting beaten up at the end of the line. Byrd and Neisler ran to Noah, who was unconscious in

the pool hallway. Kyle Minks testified that when Noah fell down after being hit repeatedly by McConnaughay, he ran to get Neisler. He and Neisler ran back to Noah together. Minks said the attack was "pretty quick." Keifer Samples, who did not witness the attack but was a classmate of Noah's, testified that fights were uncommon at Olympia Middle School and Olympia High School.

¶ 16 After the incident, Olympia Middle School Principal Andy Walsh asked nine students who witnessed the attack to write down what they saw. They wrote their statements on scratch paper and gave them to Walsh. Walsh then gave the statements to Olympia High School Principal Lance Thurman and Assistant Principal Matthew Hurley. Hurley incorporated the students' statements into a written report, which was provided at McConnaughay's expulsion hearing on November 15, 2011.

¶ 17 Andrew Wise, the hearing officer at McConnaughay's expulsion hearing, testified that he was not provided with the middle school students' written statements but was provided with Hurley's report, which incorporated the statements. At the conclusion of McConnaughay's expulsion hearing, Wise recommended that McConnaughay be expelled for two years. Wise provided a written report to the school board summarizing his findings, and the board agreed with his recommendation. McConnaughay did not return to Olympia High School after his expulsion. Hurley's written report and Wise's report of the expulsion hearing were placed in McConnaughay's student file and provided to plaintiffs in discovery.

¶ 18 In 2015, plaintiffs requested, through discovery, the nine eyewitness statements that Noah's middle school classmates provided to Walsh. On October 3, 2016, Wise informed plaintiffs that the statements had been destroyed. No one knew how or when the statements were destroyed, but Hurley estimated it was sometime between 2011 and 2014. Brad Hutchinson,

former Olympia school district superintendent, testified that the documents were not intentionally destroyed to keep them from plaintiffs.

¶ 19 Hurley testified that there are always risks when middle school and high school students intermingle. There was no evidence presented that the pool hallway or other hallways where middle school and high school students cross paths have more incidents of violence than other areas of the schools. There was no evidence that there was any preexisting "bad blood" between Noah and McConnaughay or that staff had any reason to believe that violence would occur between the students. Hurley testified that Olympia High School had a resource officer, whose job was to help keep students safe. The officer was absent on November 8, 2011, and no substitute was called.

¶ 20 At the conclusion of the trial, the jury entered a verdict in favor of plaintiffs and against defendants. The jury awarded plaintiffs damages totaling $272,285.46 and apportioned liability as follows: 22.5% each to Neisler, Koeppel, Walsh and Thurman; 3% to Wise; and 7% to Hurley.

¶ 21 Defendants filed a motion for judgment *n.o.v.* or, alternatively, a new trial. The trial court granted defendants' motion for judgment *n.o.v.*, finding no willful and wanton conduct by defendants.

¶ 22 ANALYSIS

¶ 23 A motion for judgment *n.o.v.* presents a question of law as to whether "there is a total failure or lack of evidence to prove a necessary element of the plaintiff's case or the defendant's defense." *Heideman v. Kelsey*, 414 Ill. 453, 457 (1953). "Judgment notwithstanding the verdict should not be entered unless the evidence, when viewed in the light most favorable to the

opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 109 (1997).

¶ 24 "In ruling on a motion for a judgment *n.o.v.*, a court does not weigh the evidence, nor is it concerned with the credibility of the witnesses; rather it may only consider the evidence, and any inferences therefrom, in the light most favorable to the party resisting the motion." *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992). "The court has no right to enter a judgment *n.o.v.* if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Id.* at 454.

¶ 25 I. Willful and Wanton Negligence in Supervision

¶ 26 Plaintiffs first argue that the trial court erred in granting defendants' motion for judgment *n.o.v.* on their claim that defendants committed willful and wanton negligence in supervising Noah and McConnaughay.

¶ 27 Pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (Act), school district personnel are immune from liability for mere negligence. 745 ILCS 10/3–108(a) (West 2016). They can be liable only if their behavior is willful and wanton. *Id.*; *In re Estate of Stewart*, 2016 IL App (2d) 151117, ¶ 73. The Act provides in pertinent part: "[N]either a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury." 745 ILCS 10/3–108(a) (West 2016). The Act defines "willful and wanton conduct" as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional,

shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1–210 (West 2016).

¶ 28 Willful and wanton conduct is "an aggravated form of negligence," not an independent tort. *Jane Doe–3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. "Illinois courts define willful and wanton conduct, in part, as the failure to take reasonable precautions after 'knowledge of impending danger.' " *Barr v. Cunningham*, 2017 IL 120751, ¶ 20 (quoting *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 429 (1980)). Willful and wanton conduct " 'requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man.' " *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 449 (1992) (quoting Restatement (Second) of Torts § 500, Comment g, at 590 (1965)).

¶ 29 Whether the evidence presents willful and wanton conduct is usually a question of fact for the jury. *Gammon v. Edwardsville Community Unit School District No. 7*, 82 Ill. App. 3d 586, 589 (1980). However, in some circumstances, a court may decide as a matter of law if willful and wanton conduct exists. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 245 (2007).

¶ 30 Courts have repeatedly held that the breach of a duty to supervise students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct. See *Barr*, 2017 IL 120751, ¶ 24; *Lynch*, 82 Ill. 2d at 430; *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503, ¶ 43; *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 112 (2008); *Knapp v. Hill*, 276 Ill. App. 3d 376, 385 (1995); *Towner v. Board of Education of City of Chicago*, 275 Ill. App. 3d 1024, 1032-33 (1995); *Poelker v. Warrensburg Latham Community Unit School District No. 11*, 251 Ill. App. 3d 270,

278 (1993); *Siegmann v. Buffington*, 237 Ill. App. 3d 832, 834 (1992); *Jackson v. Chicago Board of Education*, 192 Ill. App. 3d 1093, 1101 (1989); *Holsapple v. Casey Community Unit School District C-1*, 157 Ill. App. 3d 391, 394 (1987); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 579 (1985); *Pomrehn v. Crete-Monee High School District*, 101 Ill. App. 3d 331, 336 (1981); *Booker v. Chicago Board of Education*, 75 Ill. App. 3d 381, 386 (1979); *Cipolla v. Bloom Township High School District No. 206*, 69 Ill. App. 3d 434, 438 (1979); *Montague v. School Board of Thornton Fractional Township North High School District 215*, 57 Ill. App. 3d 828, 831-32 (1978); *Clay v. Chicago Board of Education*, 22 Ill. App. 3d 437, 441 (1974); *Gubbe v. Catholic Diocese of Rockford*, 122 Ill. App. 2d 71, 79 (1970); *Woodman v. Litchfield Community School District No. 12, Montgomery County*, 102 Ill. App. 2d 330, 334 (1968).

¶ 31 "A teacher cannot be required to watch the students at all times while in school." *Mancha v. Field Museum of Natural History*, 5 Ill. App. 3d 699, 702 (1972). A tremendous burden would be imposed on school districts and teachers if they were required to provide "constant surveillance of the children." *Id.* "[A] teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct." *Jackson*, 192 Ill. App. 3d at 1100; see also *Poelker*, 251 Ill. App. 3d at 278 (failure to provide direct supervision to students does not constitute willful and wanton conduct). No willful and wanton misconduct exists even if children are left unsupervised at school for up to 30 minutes. See *Jackson*, 192 Ill. App. 3d at 1100; see also *Pomrehn*, 101 Ill. App. 3d at 335 (softball team members unsupervised for 15 minutes); *Albers v. Community Consolidated No. 204 School*, 155 Ill. App. 3d 1083, 1086 (1987) (students unattended in classroom for up to 10 minutes).

¶ 32 To prove willful and wanton negligence in supervision, the plaintiff must show that the teacher or school knew or should have known that a lack of supervision posed a high probability

of serious harm or an unreasonable risk of harm. *Jackson*, 192 Ill. App. 3d at 1100. The general allegation that a teacher should have known the harm would occur without adult supervision is inadequate. *Id*. "Certainly, there is a risk of injury and danger involved in almost any gathering of teenagers." *Pomrehn*, 101 Ill. App. 3d at 335. Yet, "[t]he general potential for danger with groups of children is not sufficient standing alone to sustain a claim for willful and wanton misconduct." *Albers*, 155 Ill. App. 3d at 1086; see also *Towner*, 275 Ill. App. 3d at 1032 (knowledge of school official that teenagers would gather on school grounds at the end of school day cannot be converted into knowledge that the plaintiff would become involved in a fight).

¶ 33 When a student is injured by the intentional acts of another student, school officials may be found guilty of willful and wanton misconduct only if they should have anticipated the offending student's actions. See *Gubbe*, 122 Ill. App. 2d at 79; see also *Gammon*, 82 Ill. App. 3d at 589-90 (whether school district committed willful and wanton misconduct was question for jury where teacher left plaintiff unsupervised with student who teacher knew had disciplinary problems and had made a specific direct threat of violence against plaintiff). "[S]chools and teachers cannot be charged with the duty of anticipating and guarding against the willful and wanton misconduct by other children who suddenly and apparently without provocation attack other students." *Albers*, 155 Ill. App 3d at 1086; see also *Towner*, 275 Ill. App. 3d at 1032-33 (vice-principal was "neither an omniscient being nor an insurer of plaintiff's safety" as a matter of law and, therefore, not guilty of willful and wanton conduct when plaintiff, a student, was intentionally hit on the head with a golf club on school grounds); *Clay*, 22 Ill. App. 3d at 441 (board of education not guilty of willful and wanton misconduct where student was attacked by another pupil while teacher was absent from classroom).

¶ 34 Based on the facts of this case, the trial court properly granted judgment *n.o.v.* to defendants, finding, as a matter of law, that defendants did not commit willful and wanton negligence in supervision. Noah was injured when he was attacked by a high school student while standing in a hallway used by middle school and high school students. There was no intentional act by the teachers or school administrators that caused the attack or contributed to Noah's injuries. There was no testimony or evidence that Neisler, Koeppel or any other defendant failed to quickly and appropriately respond when they became aware of the attack. Nor was there any testimony or evidence that Neisler, Koeppel or any other defendant delayed in seeking and obtaining medical help for Noah.

¶ 35 Moreover, the evidence did not establish that defendants consciously or recklessly disregarded any known danger. Plaintiffs presented no evidence that defendants had any reason to believe McConnaughay would attack Noah in the pool hallway. Plaintiffs did not provide evidence of previous assaults on students in that area of the school. Nor did they establish a hostile relationship between McConnaughay and Noah before November 8, 2011. To the contrary, the undisputed evidence was that the two had never met until that day. While Hurley testified that there is always a risk when high school and middle school students intermingle, "this general potential for danger with groups of children is not sufficient to support a charge of willful and wanton misconduct." See *Pomrehn*, 101 Ill. App. 3d at 335.

¶ 36 Viewing the evidence in the light most favorable to plaintiffs, as we must, defendants failed to directly supervise Noah and McConnaughay for up to seven minutes. This does not constitute willful and wanton conduct. See *Jackson*, 192 Ill. App. 3d at 1100; *Pomrehn*, 101 Ill. App. 3d at 335; *Albers*, 155 Ill. App. 3d at 1086. Even if, as plaintiffs suggest, Koeppel left the high school gym for a few minutes (based on his statement to Noah's grandmother), such an act

would be merely negligent because there was no evidence that Neisler was aware of a credible threat of violence against Noah or any other middle school student. See *Jackson*, 192 Ill. App. 3d at 1101.

¶ 37 Plaintiffs failed to introduce any evidence at trial that any defendant either knew or had reason to believe that a serious injury would occur as a result of Noah and McConnaughay being without direct supervision for a matter of minutes. The attack on Noah, while horrific, was the result of McConnaughay's actions. Defendants cannot be held responsible for failing to anticipate and stop McConnaughay's intentional criminal assault on Noah when they had no warning of it. See *Albers*, 155 Ill. App. 3d at 1086; *Clay*, 22 Ill. App. 3d at 441; *Towner*, 275 Ill. App. 3d at 1032-33. We affirm the trial court's decision to grant a judgment *n.o.v.* to defendants for plaintiffs' claim of willful and wanton negligence in supervision.

¶ 38 II. Willful and Wanton Spoliation of Evidence

¶ 39 Plaintiffs also argue that the trial court erred in granting judgment *n.o.v.* to defendants on their claim of willful and wanton spoliation of evidence because defendants destroyed the student eyewitness statements in violation of the Illinois School Student Records Act (Records Act), 105 ILCS 10/1 *et seq*. (West 2016).

¶ 40 Spoliation of evidence is a form of negligence. *Martin v. Keeley & Sons, Inc.*, 2012 IL 113270, ¶ 26. The general rule in Illinois is that there is no duty to preserve evidence. *Id*. ¶ 27. In order to establish an exception to the general no-duty rule, the plaintiff must show that an "agreement, contract, statute, special circumstance, or voluntary undertaking" gave rise to a duty to preserve the evidence and that a reasonable person in the defendant's position "should have foreseen that the evidence was material to a potential civil action." *Id.*

¶ 41 Our supreme court has declined to recognize willful and wanton spoliation of evidence as a new tort. *Boyd v. Travelers Insurance Co.,* 166 Ill. 2d 188, 201 (1995). "Whether Illinois courts will recognize a cause of action for willful and wanton or intentional spoliation of evidence remains an open question." *Jones v. O'Brien Tire and Battery Service Center, Inc.,* 374 Ill. App. 3d 918, 937 (2007). If such a tort exists, the plaintiffs must prove that the defendants intentionally destroyed or misplaced the evidence. *Boyd,* 166 Ill. 2d at 201.

¶ 42 Section 4(f) of the Records Act provides: "Each school shall maintain student temporary records and the information contained in those records for not less than 5 years after the student has transferred, graduated or otherwise withdrawn from the school." 105 ILCS 10/4(f) (West 2016). Section 2(d) of the Act defines "[s]chool [s]tudent [r]ecord" as "any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at is direction or by an employee of a school." 105 ILCS 10/2(d) (West 2016). Section 2(f) defines "[s]tudent [t]emporary [r]ecord" as "all information contained in a school student record but not contained in the student permanent record." 105 ILCS 10/2(f) (West 2016). The Act further states that "the student temporary record shall include information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction." *Id*. Finally, the Act defines "[s]tudent [p]ermanent [r]ecord" as "the minimum information necessary to a school in the education of the student and contained in a school student record[,]" including "the student's name, birth date, address, grades and grade level, parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize." 105 ILCS 10/2(e) (West 2016).

¶ 43 Here, defendants contend that they did not violate the Records Act by failing to retain the student eyewitness statements because the statements were incorporated into Hurley's discipline

report and Wise's expulsion report, which were both retained in McConnaughay's student file. We agree. The Records Act requires that a student's temporary record include "information regarding serious disciplinary infractions that resulted in expulsion." 105 ILCS 10/2(f) (West 2016). Wise's expulsion report and Hurley's discipline report were sufficient to satisfy this requirement. Defendants were not required to retain the student eyewitness statements. Thus, the trial court did not err in granting defendants' motion for judgment *n.o.v.* on plaintiffs' spoliation claim.

¶ 44 Additionally, plaintiffs failed to present evidence that defendants intentionally destroyed or misplaced the student eyewitness reports, as is necessary for them to succeed on their claim of willful and wanton spoliation of the evidence. See *Boyd,* 166 Ill. 2d at 201. Defendants testified that they did not know what happened to the student eyewitness statements and denied knowingly and intentionally destroying them. Plaintiffs failed to prove otherwise. Thus, an essential element of plaintiff's cause of action was lacking, and the trial court properly granted judgment *n.o.v.* to defendants on plaintiffs' spoliation claim.

¶ 45 CONCLUSION

¶ 46 The judgment of the circuit court of Tazewell County is affirmed.

¶ 47 Affirmed.