

**WYNKWART NO v MINISTER OF EDUCATION AND ANOTHER 2002 (6)  
SA 564 (C)**

**Headnote : Kopnota**

The plaintiff instituted action on behalf of his son, R, who had been seriously injured as a result of a fall on the premises of the second defendant, the school at which R was a learner. The question for consideration was whether the defendants were liable for the injuries sustained by R when he fell off an unused school gate while attempting to climb over it. The evidence was that most of the learners at the school exited the premises each day at gate 5. They were accompanied by their respective teachers up to a point before gate 5 at which stage the learners were handed over to another teacher assisted by the scholar patrol. Once outside the exit gate, the scholar patrol would escort the learners across a busy road and then leave them to walk unaccompanied to their homes. On the day of the incident, R had attempted to leave the school premises through gate 4 and, because the gate was not used and kept locked, tried to climb over the gate. He slipped and fell on his head, sustaining serious injuries which left him permanently disabled. The defendants' evidence was that the learners had regularly been told in assemblies and at orientation that they were not allowed to jump over the fence surrounding the school premises. The plaintiff urged the Court to find that R's class teacher, Mrs N, had been negligent in failing to ensure that all her pupils were present on the day in question when she accompanied them to gate 5.

*Held*, that the test of a reasonable prudent person or reasonably careful parent in relation to his/her children, involving the legal fiction of the *bonus paterfamilias*, was applicable to the situation. Teachers acted in *loco parentis* and were better trained than most parents about child development. It was accordingly not asking too much of a person acting in *loco parentis* to be judged on the normal test of negligence in the discharge of his/her duties towards his/her ward. (Paragraphs [12] and [13] at 568E/F and F - H.)

*Held*, further, that there was a duty entrusted to each teacher to escort his or her learners. This duty was consistent with the observation that young children were impulsive and tended to forget all they had been told not to do at a given time. This had been the duty of care owed to R by the respondents. (Paragraph [17] at 569I - 570A.)

*Held*, further, that the question to be asked, therefore, was whether the defendants had taken reasonable steps to ensure that R, like all his peers, left the school premises through the correct exit. If not, there had been a breach of duty rendering the defendants negligent. A further question which had to be answered was whether the harm had been foreseeable. (Paragraphs [17] and [18] at 570B - C.)

*Held*, further, that the existence of the practice at the school that learners were escorted to the outside gate under very close supervision indicated a particular appreciation of the nature of children by the schoolmaster and the

teachers. They realised that, if left on their own after classes were dismissed for the day, the learners might expose themselves to danger within the school premises. The very act of accompanying the learners to a particular point outside the premises amounted to supervising them closely up to a stage which could be said to be relatively free of danger. The risk of injury while crossing the busy road had therefore not been the only foreseeable harm. An attempt to jump over the fence had also been foreseeable, although the extent of the harm caused might not have been. (Paragraph [22] at 572A/B - D.)

*Held*, further, that it was not sufficient that the learners had been told during orientation and at assemblies not to climb over the gates and fences. Children of the particular age under consideration were by their very nature impulsive, unpredictable and irresponsible and could, notwithstanding advices to the contrary, still engage in dangerous activities. It was for this reason that teachers were trained in child development and psychology, to enable them to understand the behaviour of the children they were entrusted with. The teachers could not abdicate their responsibility by arguing that the young children had acted in a manner that they had been told not to act. (Paragraph [23] at 572D - E/F.)

*Held*, accordingly, that the defendants were liable for the damages sustained by R while attempting to leave the school premises by jumping over an unused gate. (Paragraph [24] at 572F.)