

Osborn v. Waterbury (AC 39574)

**Brief Summary:** The plaintiff mother sought damages for injuries suffered to her child after she was assaulted at school. The court held that the trial court's finding that there was perhaps 400 students on the playground at the time of the assault was clearly erroneous as it was not supported by any evidence, constituting a harmful error that required a new trial.

Tatayana Osborn sustained injuries when she was assaulted by other students on the playground during recess at school. Tatayana was surrounded by a circle of students who physically assaulted her and pushed her into a stone wall, causing injuries to her nose and cheek with resulting facial scarring. She also sustained posttraumatic headaches for a period of time afterwards. The plaintiff sought damages from the defendants (school board and city of Waterbury) alleging that the injuries were caused by the negligence and carelessness of the defendants in that they failed to adequately supervise the children both inside and outside of the class. The trial court found in favor of the plaintiff concluding that the plaintiffs' injuries were caused by insufficient staffing of personnel to exercise proper control over the number of students on the playground at the time (perhaps as many as 400 students). The issue on appeal is whether the finding that the plaintiffs' injuries were caused by the fact that 1 student intern and 3 or 4 staff members were insufficient to exercise proper control over perhaps as many as 400 students was clearly erroneous. The court held that the finding was clearly erroneous because there was no evidence suggesting that 400 students went outside for recess at the same time. Also, it held that this finding was a harmful error necessitating a new trial.

The role of the appellate court is not to retry the factual findings of a case, thus, the standard for overturning a factual finding is clearly erroneous. A court's determination is clearly erroneous only in cases in which the record contains no evidence to support it, or in cases in

which there is evidence, but the reviewing court is left with the definite and firm conviction that a mistake has been made.

To determine whether the finding in the case was clearly erroneous the court had to review the evidence presented at trial. The principal of the school testified that there were probably around 400 students at the school and approximately twenty-five classrooms. Further, she testified that there were no more than 150 students dismissed from lunch to recess when the plaintiff was assaulted. This was based on her understanding that there were three fourth and fifth grade classes of approximately 25 students that comprised the lunch wave in question. Danielle Avalos, a paraprofessional who was on recess duty and was the first staff member to respond to the incident, however, testified that she did not think that there were more than fifty students on the playground at the time of the incident. In closing arguments, the plaintiff's counsel argued that "we know it was probably between 90 and 150 children on the playground." The court concluded that the 400-student finding was clearly erroneous because there was no evidence suggesting that the entire school ate lunch and was dismissed for recess at the same time. Instead, the school had three separate lunch waves and the testimonies above establish the number of students at recess as between 50 and 150. Additionally, the court stated that the finding was based on another erroneous finding—that there was no evidence to suggest that only portions of students went out for recess at a given time. This was erroneous as testimony established that the students went to lunch and recess in three separate waves. Just because a finding is erroneous does not mean a new trial is required, the error must be harmful to the verdict, meaning it impacted the verdict.

The court noted that the Supreme Court determined that the trial court could have found the defendants negligent on the basis that there was an inadequate number of staff to students or

on the basis that the supervision itself was inadequate—or both. Despite this the court concluded that the erroneous finding was harmful because of how intertwined the finding was with the court's conclusion that the defendants were negligent. It was intertwined as the trial court repeatedly referenced it throughout the decision and in each of the three paragraphs pertaining to the finding of negligence the number of students and/or student to staff ratio was mentioned. Thus, the court concluded that this error was harmful as it impacted the verdict. Consequently, the judgment was reversed and remanded for a new trial.

The dissent agreed that the 400-student finding was clearly erroneous, however, it disagreed that the finding was harmful. Justice Prescott argued that the erroneous finding was not harmful as the Supreme Court determined the success of the case was not dependent on the finding. In Justice Prescott's view the court was bound by this finding by the Supreme Court, thus, arguing the judgment should have been affirmed.

The key takeaway of this case is that although it is very difficult to overturn a factual finding as being clearly erroneous, it is not impossible. Thus, potential appellants should not shy away from appealing their case when the record contains a clearly erroneous finding such as the one here.