

366 So.2d 802

District Court of Appeal of Florida, Third District.

Elvin ALVES and Alicia Alves, Appellants,

v.

ADLER BUILT INDUSTRIES, INC., a Florida Corporation, North Causeway Townhouses, Inc., a Florida Corporation, and Morton Adler, Individually, Appellees.

Nos. 77-1363, 77-1364, 78-45 and 78-106.

Jan. 9, 1979.

Rehearing Denied Feb. 12, 1979.

Parents sued neighboring landowner for the wrongful death of their two-year-old child, who drowned while playing in and about a sand pile adjacent to a lake on property next to her parents' home. The Circuit Court, Dade County, Francis J. Christie, J., rendered summary judgment for the neighboring landowner and parents appealed. The District Court of Appeal held that the negligence on the part of the parents in failing to properly supervise the two-year-old child, when they were on notice of the propensity of the child to play in and about the sand pile, was the proximate cause of her demise and any negligence of the neighbor was not the proximate cause of the accident.

Affirmed.

Kehoe, J., dissented.

West Headnotes (1)

[1] **Negligence**
 **Pools, Bodies of Water and Beaches**

- 272 Negligence
- 272XVII Premises Liability
- 272XVII(I) Proximate Cause
- 272k1234 Pools, Bodies of Water and Beaches
(Formerly 272k56(1.17), 272k56(1.14))

Where parents were on notice of propensity of their two-year-old child to play in and about sand pile adjacent to lake on property next

to parents' home, their negligence in failing to properly supervise the child was proximate cause of her accidental drowning and any negligence on part of neighboring landowner was not proximate cause of accident.

[9 Cases that cite this headnote](#)

Attorneys and Law Firms

*803 Horton, Perse & Ginsberg and Arnold R. Ginsberg, Miami, Robert Sussman, Hialeah, for appellants.

Frates, Floyd, Pearson, Stewart, Richman & Greer and Scott D. Sheftall; Marlow, Shofi, Ortmyer, Smith & Spangler; Adams & Ward and Amy Shield Levine, Miami, Sidney B. Shapiro, North Miami Beach, for appellees.

Before HENDRY, BARKDULL and KEHOE, JJ.

Opinion

PER CURIAM.

These consolidated appeals question the propriety of three summary judgments in a negligence action. Joyce Alves, a two-year-old child, drowned while playing in and about a sand pile adjacent to a lake on property next to her parents' home.

We affirm because the negligence of the defendants, if any (which we do not rule upon), was not the proximate cause of the accident. The negligence on the part of the parents in failing to properly supervise the two-year-old child, when they were on notice of the propensity of the child to play in and about the sand pile, was the proximate cause of her demise. ¹ [Orefice v. Albert](#), 237 So.2d 142 (Fla.1970); [Perotta v. Tri-State Insurance Company](#), 317 So.2d 104 (Fla. 3d DCA 1975); 59 Am.Jur.2d, Parent and Child, s 14.

1	Chuck K. Davis (the construction superintendent) took the child home on at
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least
one
occasion
and
gave her
to her
mother.
Vincent
Pepe
(the
watchman)
took her
home a
couple
of times
and told
the
people
the
child
was
near the
water.
Bertram
M.

McCall
(a
laborer)
took her
home
from
the site
on at
least
two or
three
occasions.

In view of our ruling as to the proximate cause being a bar to this action, the other points raised in the several briefs have not been considered. Therefore, the summary judgments here under review are hereby affirmed.

Affirmed.

KEHOE, J., dissents.

All Citations

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