

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 22 1984

CLERK SUPREME COURT

168

HARRY REICKS, as next friend of)
Lanette Reicks; and HARRY REICKS,)
individually,)

Plaintiff-Appellant,)

Filed May 22, 1984

vs.)

TURKEY VALLEY COMMUNITY)
SCHOOL,)

4-146
83-879

Defendant-Appellee.)

Appeal from the Iowa District Court for Winneshiek County - William G. Klotzbach, Judge.

Plaintiff appeals from the dismissal of this tort suit brought on behalf of a minor daughter who was injured when struck by a bolt of lightening at school.
AFFIRMED.

R. L. Donohue of Donohue Law Office P.C., West Union, Iowa, for plaintiff-appellant.

Donald H. Gloe of Miller, Pearson, Gloe, Burns & Beatty, P.C., Decorah, Iowa, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

Plaintiff appeals from the dismissal of this tort suit brought on behalf of a minor daughter who was injured when struck by a bolt of lightning at school. Plaintiff, both as next friend to his daughter, Lanette, and in his own behalf, brought a tort suit against the defendant school district. The petition was filed on April 11, 1983, and alleges that Lanette was struck by lightning on April 13, 1981. The petition also contains assertions that responsible school employees were immediately aware of the accident, and that no notice had been given pursuant to section 613A.5 of the code. The petition contains an assertion that no such notice was necessary because the school had actual notice and because the notice provisions of chapter 613A are unconstitutional as a "violation of due process of law"

The school district moved to dismiss on grounds that the notice required by section 613A.5 had not been given. The trial court granted the motion to dismiss, citing Shearer v. Perry Community School District, 236 N.W.2d 688 (Iowa 1975), and Dietiker v. Central City Community School District, no. 66840 (Iowa January 19, 1983) (unpublished). We affirm.

This case once again squarely presents the question of the constitutionality of the municipal tort claims act. Plaintiff raised only a due process argument in trial court, not the equal protection contentions he additionally advances on appeal, which we do not consider.

We cannot cite as authority an unpublished decision by the supreme court. We adhere to the decision in Shearer v. Perry Comm. Sch. Dist., 236 N.W.2d 688, 691-93 (Iowa 1975), and reject plaintiff's due process challenge to section 613A.5.

If the equal protection issue was properly before us on this appeal, we would reject it also. Lunday v. Vogelmann, 213 N.W.2d 904, 906-08 (Iowa 1973).

AFFIRMED.