

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 1, 2007

501952

IRENE LODGE-STEWART,
Individually and as
Administrator of the Estate
of NATHALIE LODGE,
Deceased, and as Guardian
of TENAE TERELL LODGE, an
Infant,

Appellant,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,

Respondent.

Calendar Date: September 11, 2007

Before: Crew III, J.P., Mugglin, Rose, Lahtinen and Kane, JJ.

Andrew J. Spinnell, New York City, for appellant.

Andrew M. Cuomo, Attorney General, Albany (Kate H. Nepveu
of counsel), for respondent.

Rose, J.

Appeal from an order of the Court of Claims (Collins, J.),
entered April 25, 2006, which, among other things, granted
defendant's motion for summary judgment dismissing the claim.

Following the murder of her daughter by a parolee under
defendant's supervision, claimant filed a claim alleging that,
among other things, defendant had failed to adequately supervise
the parolee in accordance with the provisions of its Division of
Parole Policy and Procedures Manual. In particular, claimant

alleged that the Manual required defendant's parole officers to make home visits and otherwise regularly confirm that the parolee was obeying his hours of curfew. Although claimant demanded disclosure of the Manual in May 2005 and defendant refused to provide anything other than a copy of its table of contents without a court order, she took no further action to obtain any of the contents until after she had served a trial note of issue and certificate of readiness. When defendant moved for, among other things, summary judgment dismissing the claim, claimant cross-moved for a continuance on the ground that the Manual may contain information essential to oppose the motion. The Court of Claims denied claimant's cross motion and granted defendant's motion for summary judgment.

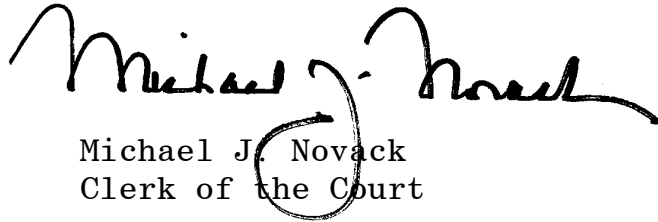
Claimant now appeals, arguing that she should have been granted a continuance to enable her to obtain disclosure of the Manual, and her claim should not have been summarily dismissed because she alleged that defendant's officers had been negligent in the performance of ministerial acts. We cannot agree. Even assuming that the Manual prescribed exclusively ministerial acts and defendant's officers failed to comply with those prescriptions, an essential element is missing. The threshold issue in any negligence action is whether the defendant owes a legally recognized duty of care to the plaintiff (see e.g. Palka v Servicemaster Mgt. Servs. Corp., 83 NY2d 579, 586-587 [1994]). As the Court of Appeals explained in Lauer v City of New York (95 NY2d 95, 99 [2000]), if the acts forming the basis of a claim against a governmental entity are ministerial, they are actionable only if they are otherwise "tortious," and the injured party must show that the defendant owed not merely a general duty to the public, but a specific duty to him or her. "Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm" (id. at 100 [citations omitted]). Here, claimant failed to allege or show that in supervising the subject parolee, defendant owed her daughter an enforceable duty to comply with its supervisory procedures and policies different from that owed to the public generally (see also Joslyn v Village of Sylvan Beach, 256 AD2d 1166, 1167 [1998]). Nor does she suggest that disclosure of the Manual would have revealed a direct duty owed to her daughter (see e.g. George S. May Intl. Co. v Thirsty

Moose, Inc., 19 AD3d 721, 722 [2005]).

Crew III, J.P., Mugglin, Lahtinen and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court