

DOCKET NO. LLI CV-15-6013124S : SUPERIOR COURT  
RICHARD BLITZ, TRUSTEE OF THE  
RICHARD BLITZ DEFINED BENEFIT  
PENSION PLAN AND TRUST : J.D. OF LITCHFIELD  
VS. : AT LITCHFIELD  
GLEN LOVEJOY AND  
KATHLEEN RIISKA-LOVEJOY : SEPTEMBER 13, 2016

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Defendants Glen Lovejoy and Kathleen Riiska-Lovejoy hereby submit this Memorandum of Law in support of their Motion for Partial Summary Judgment as to the Second Count of Plaintiff's Complaint.

There is no genuine issue of material fact with respect to the Second Count, which sounds in negligence, because Defendants did not owe Plaintiff a legal duty. There is no genuine issue of material fact regarding duty because:

1. There is no evidence that Owen Lovejoy had a propensity or tendency to set fire to the property of others<sup>1</sup> prior to March 8, 2014;

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<sup>1</sup> Defendants purposefully use the phrase "property of others" to include property that is not intended to be lit on fire and that is lit without the permission of the owner. The phrase is intended to avoid a technical argument

2. Defendants did not know, and had no reason to know, whether their son possessed any propensity to set fire to the property of others prior to March 8, 2014; and
3. Defendants had neither the ability nor the opportunity to realistically restrain their seventeen year-old son from setting fire to the structure in question.

Because there is no genuine issue with regard to any of these material facts, Defendants respectfully request the Court grant their Motion.

**I. FACTS AND PROCEDURAL HISTORY:**

The case arises out of a fire that burned down a structure located at 102 Simmons Pond Road, Colebrook, Connecticut (the “Premises”), on March 8, 2014. See First Count of Plaintiff’s Complaint at ¶ 4. Plaintiff, Richard Blitz, Trustee of the Richard Blitz Defined Benefit Pension Plan and Trust (“Plaintiff” or “Blitz”), alleges that on March 8, 2014 he, as Trustee, was the owner of the Premises and suffered damages when Owen Lovejoy, Defendants’ son, intentionally burned down the structure on the Premises on March 8, 2014.

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about whether lighting a candle or fireworks or a backyard barbeque fire pit would constitute “setting a fire.”

*Id.* On March 8, 2014, Owen Lovejoy was seventeen years and six months old, turning eighteen on August 20, 2014. See Affidavit of Glen Lovejoy and Affidavit of Kathleen Riiska-Lovejoy attached hereto as Exhibit A at ¶5 and Exhibit B, at ¶5 respectively. Tragically, Owen Lovejoy committed suicide on September 19, 2014. Exhibit A at ¶24 and Exhibit B, at ¶11.

Plaintiff initiated this lawsuit by Writ, Summons and Complaint returnable on December 29, 2015. Plaintiff's Complaint sets forth two theories of recovery. In his First Count, not addressed by this motion, Plaintiff alleges that Defendants are liable pursuant to C.G.S. § 52-572, up to a statutory maximum of five thousand (\$5,000.00) dollars. C.G.S. § 52-572 imposes joint and several liability on parents whose minor children willfully and maliciously cause damage to another's property. In his Second Count, Plaintiff alleges a common law theory of negligent parental supervision.

At all relevant times Defendants and their son were residents of 30 Cobb City Road, Colebrook, Connecticut. See Exhibit A at ¶3 and Exhibit B at ¶3. The defendants' home is the property adjacent to the Premises. Exhibit A at ¶4 and Exhibit B at ¶4. Plaintiff does not know whether Owen Lovejoy had had been to the Premises prior to March 8, 2014. See Deposition Transcript of

Richard Blitz attached hereto as Exhibit C at 71-72. Plaintiff testified at his deposition that he has no knowledge of any time that Owen Lovejoy set fire to any property prior to March 8, 2014. Exhibit C at 75. Plaintiff testified that the basis for his allegation that Defendants “failed to exercise reasonable care in controlling their minor child,” was that he understood Owen Lovejoy was “being treated” prior to March 8, 2014. *Id.* at 73. Plaintiff stated that he was waiting for the disclosure of medical records with regard to such prior treatment before he would be able to provide any basis for how Defendants could have restrained their son from burning the structure on the Premises. *Id.* at 74.

Pursuant to the Court’s Order dated April 11, 2016, the undersigned obtained Owen Lovejoy’s mental health records dating from August 20, 1996 through March 8, 2014, from the following providers: Community Mental Health Affiliates; Kenneth Selig, M.D.; Charlotte Hungerford Hospital; Hartford Hospital; Anxiety Treatment Center, LLC, Donna Bouchard, APRN, and Dennis Kobylarz, M.D. Defendants also obtained Owen’s records, for treatment other than mental healthcare, dating from January 1, 2010 through March 8, 2014, from the following provider: Dennis Kobylarz, M.D. All of the records were

produced to Plaintiff's counsel, with the exception of information that was conspicuously redacted the medical history of Owen's family members having nothing to do with any propensity to set fire to another person's property. See Defendants' Discovery Responses, attached as Exhibit D hereto.

Defendants' have reviewed all of the records obtained by Owen's providers and produced to counsel. *Id.* at ¶¶7-12. None of the records contain any information evidencing prior fire-related conduct. *Id.* at ¶13. Further, none of the records contain any information regarding whether Owen Lovejoy had a propensity to engage in fire-related conduct. *Id.* at ¶14. Defendants are not personally aware of facts demonstrating that prior to March 8, 2014 Owen Lovejoy engaged in, or had a propensity to engage in fire-related conduct. See Glen Lovejoy, Exhibit A; Affidavit of Kathleen Riiska-Lovejoy, Exhibit B.

Plaintiff testified that he is unaware of whether Owen Lovejoy ever set fire to any property prior to March 8, 2014. Exhibit C at 75. Plaintiff admitted that the propensity he alleges Owen Lovejoy possessed was the propensity to start fires. *Id.* at 76. He also admitted that he did not know how Defendants could have reasonably restrained Owen. *Id.* at 74.

Defendants hereby move for summary judgment with respect to Plaintiff's Second Count only.

**II. STANDARD OF REVIEW:**

Summary judgment shall be rendered “when the documents submitted demonstrate that there is no issue of material fact remaining between the parties and that the moving party is entitled to judgment as a matter of law.” Practice Book § 17-49; *Bartha v. Waterbury House Wrecking Co.*, 190 Conn. 8, 11 (1982). The purpose of a motion for summary judgment is to dispose of actions lacking a triable issue of material fact. *Dorazio v. M.B. Foster Electric Co.*, 157 Conn. 226, 228 (1968). “The issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment . . . because the question is one of law . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant.” *Mozeleski v. Thomas*, 76 Conn.App. 287, 290-91, cert. denied, 264 Conn. 904 (2003).

Connecticut courts have frequently stated that a party opposing a summary judgment motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.

“[D]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleading can be warrantably inferred . . . Moreover, to establish the existence of a material fact, it is not enough for the party opposing summary judgment merely to assert the existence of a disputed issue . . . Such assertions are insufficient regardless of whether they are contained in a complaint or a brief . . . Further, unadmitted allegations in the pleadings do not constitute proof of the existence of a genuine issue as to any material fact.”

*Tuccio Development, Inc. v. Neumann*, 111 Conn.App. 588, 593-94 (2008). The party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denial but must set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Only evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment. *New Haven v. Pantani*, 89 Conn.App. 675, 678-79 (2005).

### **III. LAW AND ARGUMENT:**

The mere fact that the plaintiff claims damages does not automatically entitle him to recover. *Geoghegan v. G. Fox & Co.*, 104 Conn. 129, 132 A. 408 (1926). In order to recover, it is incumbent on Plaintiff to prove by a fair preponderance of the evidence that the injuries sustained were caused by some

negligence attributable to the defendants. *Id.* Defendants are not an insurers of the plaintiff's property against any damage. *White v. E & F. Construction Co.*, 151 Conn. 110, 193 A.2d 716 (1963); *Jager v. First National Bank*, 125 Conn. 670, 7 A.2d 919 (1939). "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *Considine v. Waterbury*, 279 Conn. 830, 858 (2006) (Internal quotation marks omitted).

The Second Count of Plaintiff's Complaint alleges a theory of negligent parental supervision. "At common law, the torts of children do not impose vicarious liability upon parents qua parents . . . ." *Kaminski v. Fairfield*, 216 Conn. 29, 34 (1990). Liability will not extend, "unless [the parents] themselves were independently negligent, as where they had . . . failed to restrain their children who they knew possessed dangerous tendencies." *LaBonte v. Federal Mutual Ins. Co.*, 159 Conn. 252, 256 (1970).

Accordingly, in order for a plaintiff to establish a duty of care in a parental negligent supervision case, a question of material fact must exist as to whether, at the time of the tortious activity: (i) the parent had the ability to control his child; (ii) the parent failed to exercise such control; (iii) the child

possessed dangerous propensities; (iv) the parent knew or should have known of such propensities. See *Robyn v. Palmer-Smith*, Judicial District of Stamford-Norwalk, Docket No.: CV-99-0174453 (February 5, 2003, Lewis, J.) (citing Restatement (Second) of Torts § 316 (1965)). Unreported cases attached in Exhibit E hereto.

**A. Defendants owed Plaintiff no legal duty with respect to Plaintiff's Second Count.**

Plaintiff's Second Count specifically alleges, in pertinent part:

"8. The Plaintiff's damages and losses were caused by the carelessness and negligence of the Defendants in one or more of the following ways:

a. In that they failed to exercise reasonable care in controlling their minor child so as to prevent him from causing the harm to the Plaintiff's property.

b. In that the Defendants negligently and carelessly failed to restrain their minor son, although they knew or should have known that the minor possessed a disposition and propensity to cause the damage he did to the Plaintiff's property, and the damages he caused to the Plaintiff's property was the probable consequence of such failure to restrain their son."

See Plaintiff's Second Count at ¶ 8. Plaintiff's Complaint does not contain any facts supporting the conclusory allegations contained in Paragraph 8.

On the contrary, there is no evidence that prior to March 8, 2014 Owen Lovejoy possessed any propensity to engage in fire-related conduct. Further, assuming, *arguendo*, such propensity did exist, Defendants did not know, and had no reason to know of it. Last, assuming, *arguendo*, that Defendants had knowledge of such propensity, they had no reasonable ability or opportunity to control their seventeen year-old son from engaging in the alleged conduct. Because there are no genuine issues as to any of the material facts described above, Defendants owed Plaintiff no duty of care with respect to the Second Count.

**i. Prior to March 8, 2014, Owen Lovejoy lacked a propensity to engage in fire-related conduct.**

The existence of the specific “propensity” alleged in a negligent supervision claim is a necessary predicate to the finding of a legal duty. See *LaBonte; Robyn*, supra. Here, Plaintiff alleges Owen Lovejoy “possessed a disposition and propensity to cause *the damage* he did to the Plaintiff property.” See Second Count of Complaint at ¶ 8 (emphasis added). “The damage” that Plaintiff alleges Owen Lovejoy caused to his property was fire damage. At his deposition Plaintiff admitted that the specific propensity he is

alleging is the propensity to start fires. Exhibit C at 76. “Propensity is defined in Webster’s Dictionary as a natural inclination: innate or inherent tendency.” *Wielock v. Finlayson*, Judicial District of Tolland at Rockville, Docket No.: CV-04-4000826 (June 23, 2005, Sholl, J.); *Santana v. Mounds*, Judicial District of Hartford at New Britain, Docket No.: CV-99-0591027 (March 6, 2000, Beach, J.). There is no factual evidence that Owen Lovejoy had any “natural inclination” to engage in fire-related conduct prior to March 8, 2014.

As stated above, Plaintiff testified that he is unaware of whether Owen Lovejoy ever set fire to any property prior to March 8, 2014. Exhibit C at 75. Essentially, Plaintiff’s testimony was that he had no basis for any of the allegations contained in the Second Count, and that he was relying, in effect, on a fishing expedition to obtain potentially-existing information from Owen Lovejoy’s medical records. *Id.* at 74, 76. In reality, none of Owen Lovejoy’s medical records contain any information indicating that Owen Lovejoy had a propensity to engage in fire-related conduct. See generally Exhibit A. Moreover, none of the records contain any information evidencing prior fire-related conduct. *Id.* Defendants are not personally aware of facts demonstrating that prior to March 8, 2014 Owen Lovejoy engaged in, or had a

propensity to engage in, fire-related conduct. See generally Exhibit A; Exhibit B.

Plaintiff's claim can be simply stated as follows: because Owen Lovejoy allegedly set the subject fire on March 8, 2014, such conduct must have been the product of some preexisting propensity. Connecticut courts do not typically permit juries to consider such inferences as they "border on the forbidden theme of 'once a thief always a thief.'" *State v. Urbanowski*, 163 Conn.App. 377, 406 n. 14 (2016). Because there are is no genuine issue of material fact that Owen Lovejoy lacked the claimed propensity prior to March 8, 2014, Defendants owed Plaintiff no duty of care.

**ii. Prior to March 8, 2014, Defendants did not know, and had no reason to know, that Owen Lovejoy possessed a propensity to engage in fire-related conduct.**

**a. Authority:**

Although there does not appear to be appellate authority on the issue, the Superior Courts have consistently ruled in defendants' favor on motions for summary judgment in parental negligent supervision cases. In *Robyn*, supra, the plaintiff and the defendant's son were teenagers who ingested hallucinogenic substances in the defendant's home while the defendant (the

tortfeasor's mother) was in New York City attending a social event. *Id.* The plaintiff claimed that after consuming the drugs the tortfeasor perceived him to be out of control and began kicking and punching the plaintiff repeatedly, thereby causing him to sustain injuries. *Id.* The plaintiff sued the defendant in negligence and the defendant moved for summary judgment. *Id.* The defendant argued that the plaintiff could not present any evidence which showed that the defendant knew or should have known that her son had a propensity to be involved in drug activity, and even if she could that she had no "reasonable way" of restraining her son. *Id.* The Court granted the defendant's motion for summary judgment holding that the defendant owed no duty because the resulting harm was not foreseeable. *Id.*

"Essentially, the plaintiff asks this court to make linear connections among the facts presented. The plaintiff argues that because, before the incident in question, Nolan had been involved with marijuana, was on his school's wrestling team and attended a school where other children used drugs and alcohol that he had dangerous tendencies to harm others and his mother should have known about these tendencies and had a duty to control her son's behavior. The plaintiff asserts that there are genuine issues of material fact regarding whether the defendant either knew or should have known that, based on the evidence presented, Nolan was likely to ingest hallucinogenic drugs and violently attack his friend, the plaintiff, and whether the defendant took adequate steps to control Nolan's conduct. The connection between the

defendant's conduct and the plaintiff's injuries are, however, in this case, too attenuated.”

*Robyn v. Palmer-Smith*, Judicial District of Stamford-Norwalk, Docket No.: CV-99-0174453 (February 5, 2003, Lewis, J.).

The Court similarly granted summary judgment in the defendants' favor in the negligent supervision case of *Smith v. Sunbury*, Judicial District of New Haven, Docket No.: NNH-CV-106010501 (July 22, 2011, Burke, J.). See Exhibit E hereto. In that case the tortfeasor, who was the defendants' son, injured the plaintiff while swinging a samurai sword on a public street. *Id.* The plaintiff alleged the defendant-mother had once contacted the local police after her son caused property damage to their family residence and therefore it was foreseeable that the son had a propensity to cause harm to other individuals. *Id.* The court granted the defendants' motion for summary judgment because the plaintiff could not produce any evidence that the defendants knew about: (i) the sword; or (ii) the specific propensity of the tortfeasor at issue in the case (violence).

See also *Forse v. Hebb*, Judicial District of Hartford, Docket No.: HHD-CV-07011581-S (March 22, 2010, Sheldon, J.) (summary judgment granted in

favor of defendant parents when plaintiff was injured on parents' property during a party hosted by child and plaintiff alleged negligent supervision); *Latronica v. Powers*, Judicial District of Waterbury, Docket No.: CV-06-5000699 (July 16, 2007, McWeeny, J.) (same); *Blair v. Mis*, Judicial District of Waterbury, 1995 Conn.Super.LEXIS 674 (March 10, 1995, McDonald, J.) (same).

Likewise, other jurisdictions have refused to hold parents liable in cases identical to the instant action where such parents had no reason to know whether their children had a propensity to play with fire. *Smith v. George*, 178 Ill.App.3d 1087 (Ill.App. 1989) (defendants owed plaintiff no duty of care with regard to their child's fire-related conduct as they had no knowledge of any fire-related propensity and "it would place an unreasonable burden on parents to supervise constantly children at play or to guard against any possible injury which could be caused by their activity"); *Clark v. McKerley*, 126 N.H. 778 (1985) (same).

**b. Argument:**

As with *Robyn* and *Smith*, here, the alleged conduct that caused Plaintiff's damages was unforeseeable to Defendants. There are no facts

evidencing that Owen Lovejoy had ever engaged in fire-related conduct or conduct designed to damage the property of another prior to March 8, 2014.

Plaintiff asserts that Defendants should be charged with knowledge of their son's tendencies because Owen was "being treated" and because Plaintiff "read things about problems - - things [Owen] was doing at school," in the "police report." Exhibit C at 73, 76. Plaintiff's assertions are insufficient to create the existence of a genuine issue of material fact. First, there is no connection between the mere fact that Plaintiff received mental health treatment prior to March 8, 2014, and the Plaintiff's argument that such treatment was sufficient to provide Defendants with notice of Owen Lovejoy's tendencies. Not only does that argument unfairly stereotype all mental healthcare patients as having nefarious tendencies, it creates a slippery slope that the Court should not permit. Taking the argument to its logical conclusion, anyone who knows someone else that is obtaining mental health treatment can be charged with notice of such other person's future behavior regardless of the circumstances.

Second, none of Owen's prior behavior could reasonably be said to put Defendants on notice of a tendency to set fires. In *Robyn*, supra, the court

found that it was unforeseeable as a matter of law that the defendant's son would consume hallucinogens and become violent, despite the defendant's prior knowledge that her son used marijuana. Similarly here, even assuming Owen Lovejoy had a tendency to cause damage to others' property, the subject fire was unforeseeable to the Defendants.

**iii. Defendants had no reasonable ability or opportunity to realistically restrain their seventeen year-old son from setting fire to the Premises.**

**a. Authority:**

Although Connecticut decisions regarding negligent supervision claims have focused on whether or not parents had reason to know of their children's propensities, other jurisdictions have examined whether a genuine issue of material fact existed as to the element of control. In *Sinsel v. Olsen*, the Supreme Court of Nebraska found that the mother of a fifteen year-old who threw fireworks at others could not be held liable as a matter of law despite the mother's knowledge of prior rebellious conduct including a "fender bender." *Sinsel v. Olsen*, 279 Neb. 38, 45-46 (2009). The court held:

"Olsen did not have a duty to confine him to the house to prevent an unforeseeable act. To hold otherwise would require parents to pull an unending 24-hour guard duty because of their child's past

incorrigible or careless behavior. Sinsel points us to no case holding that parents have this duty, and such a rule would be neither reasonable nor consistent with the Restatement's comments.”

*Id.* at 46.

The *Sinsel* court relied on comment b. of § 316 of the Restatement (Second) of Torts which relates to negligent parental supervision – the same Restatement section relied upon by Connecticut courts. See *Robyn*, *supra*. Comment b. of § 316 states:

“The duty of a parent is only to exercise such ability to control his child as he in fact has at the time when he has the opportunity to exercise it and knows the necessity of so doing. The parent is not under a duty so to discipline his child as to make it amenable to parental control when its exercise becomes necessary to the safety of others.”

Likewise, in *Nielsen v. Spencer*, the Court of Appeals of Wisconsin noted that the “Restatement’s parental duty of control has been interpreted narrowly, both in Wisconsin and elsewhere.” *Nielsen v. Spencer*, 2005 WI.App. 207 at 14 (2005). Nielsen involved a sixteen year-old who left his home with friends and assaulted the plaintiff at a mall. The court, citing appellate authority from many states as well as prominent secondary sources, held that a defendant’s ability to control her child only comes into issue under § 316 where she in fact

has the opportunity to exercise it and knows the necessity of doing so. *Id.* at p. 18. Accordingly, the Court granted summary judgment in the defendant's favor because there was no evidence that the defendant's son committed the tort in her vicinity or that before her son left the house that she knew her son "had in his possession, or would obtain, an instrument to use as a weapon or that he would otherwise get into a physical altercation." *Id.*

"[Section] 316 of the Restatement does not require parents to anticipate and guard against every logically possible instance of misconduct. This is so even where, as here, the parent was aware, or at the very least, should have been aware of the child's past delinquent but dissimilar behavior. Section 316 does not, after all, purport to make parents vicariously liable for raising careless or delinquent children, *nor does it intend to transform parents from care givers and disciplinarians into the jailors and insurers of their minor children.*"

*Id.* at 22 (internal citations omitted; internal quotation marks omitted) (emphasis added).

**b. Argument:**

Plaintiff did not allege any facts demonstrating that Defendants had the ability or the opportunity to reasonably restrain their seventeen year-old son from walking to their neighbor's property on March 8, 2014 and setting the structure there on fire. Similarly, Plaintiff admitted that he did not know how

Defendants could have reasonably restrained Owen at his deposition. Exhibit C at 74. Importantly, Defendants were not with Owen on the Premises on March 8, 2014, nor did they have any reason to know that he would go to the premises or that he might light a fire. Thus, Defendants had no opportunity to exercise control over their son, assuming, *arguendo*, that they had the ability to do so.

Owen Lovejoy was not an infant that could be placed in a crib. In reality, Owen Lovejoy was less than six months from reaching the age of majority and had activities (e.g., school, doctors' appointments, etc.) that regularly caused him to come and go from the defendants' home and that Defendants could not keep him from. While Plaintiff ostensibly believes Defendants should have kept their son under lock and key, the law in Connecticut does not require such measures. Accordingly, there is no genuine issue of material fact as to whether Defendants had the ability or opportunity to control their son on the date of loss.

#### **IV. CONCLUSION:**

Wherefore, for the foregoing reasons Defendants respectfully request the Court grant their Motion for Partial Summary Judgment.

**THE DEFENDANTS,  
GLEN LOVEJOY AND  
KATHLEEN RIISKA-LOVEJOY**

By: \_\_\_\_\_



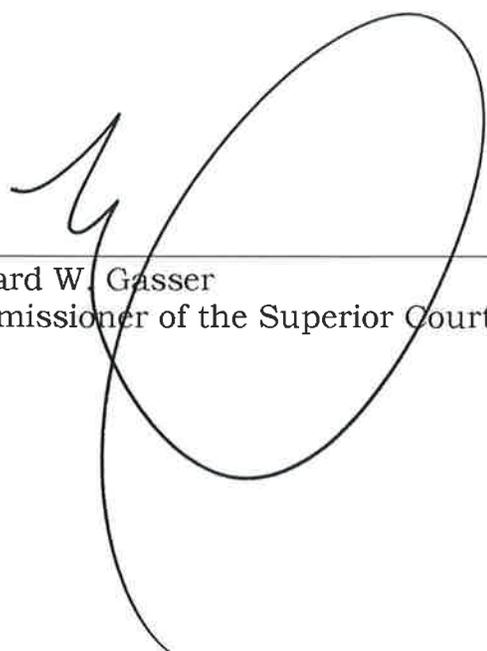
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**CERTIFICATION**

I hereby certify that a copy of the foregoing has been sent this date via electronic delivery to the following counsel of record accepting electronic delivery:

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