

Exhibit A

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 :

AFFIDAVIT OF GLEN LOVEJOY

I, Glen Lovejoy, do hereby swear to the following:

1. I am over the age of 18, believe in the obligations of an oath, and have personal knowledge of the matters below.
2. At all times below, when I refer to my son, I mean Owen Saunders Lovejoy.
3. At all relevant times I resided with my family at 30 Cobb City Road in Colebrook, Connecticut.
4. The premises described in Plaintiff's Complaint, 102 Simons Pond Road in Colebrook, Connecticut (the "Premises") is adjacent to our property on 30 Cobb City Road.
5. My son was born August 20, 1996.

6. At all relevant times, I was and I am a Medical Doctor licensed to practice in the State of Connecticut.

7. The following list of providers constitutes the entire list of providers that provided mental healthcare to my son treated from August 20, 1996 through March 18, 2014: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; Community Mental Health Affiliates, Inc.; Kenneth Selig, M.D; Dennis Kobylarz, M.D..

8. Dennis Kobylarz, M.D., is the sole health care provider who provided medical treatment to my son, other than mental healthcare, from January 1, 2010 through March 18, 2014.

9. On April 11, 2016, this Court granted my wife's and my Proposed Order authorizing us and/or Gasser Law Firm, LLC to obtain any records in the possession or control of the providers enumerated in Paragraphs 7 and 8 of this Affidavit relating to such providers' treatment of my son for the respective dates of service stated in such Paragraphs.

10. Upon information and belief, my attorneys obtained and provided me copies of all of the records in the possession or control of the providers

enumerated in Paragraphs 3 and 4 of this Affidavit relating to such providers' treatment of my son for the respective dates of service stated in such Paragraphs.

11. Upon information and belief, all of the records provided to me by my attorneys regarding my son's treatment were produced to Plaintiff's counsel, Thomas G. Benneche, Esq., with the exception of conspicuously redacted privileged material.

12. I reviewed all of the records provided to me by my attorneys relating to the treatment of my son.

13. None of the records relating to the treatment of my son prior to March 8, 2014 contain any entries regarding fire-related conduct by my son.

14. None of the records relating to the treatment of my son prior to March 8, 2014 contain any entries regarding whether my son exhibited a propensity to engage in fire-related conduct.

15. None of the records relating to the treatment of my son prior to March 8, 2014 contain any entries regarding my son's thoughts about fire.

16. I am not aware of any records relating to the treatment of my son other than those my attorneys provided to me to review.

17. I have never seen any record created prior to March 8, 2014 that contained an entry regarding fire-related conduct by my son.

18. I have never seen any record created prior to March 8, 2014 that contained an entry regarding whether my son exhibited a propensity to engage in fire-related conduct.

19. I have no knowledge of any time prior to March 8, 2014 when my son purposefully set fire to another person's property.

20. Prior to March 8, 2014, my son was never reprimanded, disciplined, etc., by me with regard to fire-related conduct.

21. Prior to March 8, 2014, I have no knowledge that my son was ever reprimanded, disciplined, etc., by his school with regard to fire-related conduct.

22. Prior to March 8, 2014, my son was never arrested for any fire-related conduct.

23. I am not aware of any facts evidencing that my son had a propensity to engage in fire-related conduct.

24. My son committed suicide on September 19, 2014.

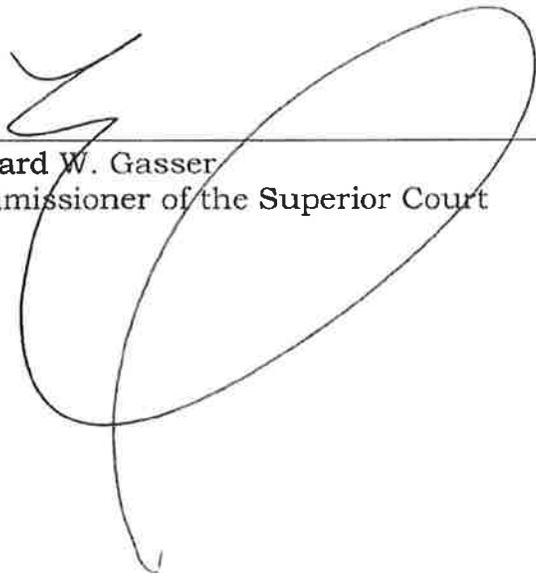
Further, the Affiant sayeth not.

I hereby certify that I have reviewed the above Affidavit and that it is true and accurate to the best of my knowledge and belief.



GLEN LOVEJOY

Subscribed and sworn to before me
this 9th day of September, 2016.



Edward W. Gasser
Commissioner of the Superior Court

Exhibit B

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 :

AFFIDAVIT OF KATHLEEN RIISKA-LOVEJOY

I, Kathleen Riiska-Lovejoy, do hereby swear to the following:

1. I am over the age of 18, believe in the obligations of an oath, and have personal knowledge of the matters below.
2. At all times below, when I refer to my son, I mean Owen Saunders Lovejoy.
3. At all relevant times I resided with my family at 30 Cobb City Road in Colebrook, Connecticut.
4. The premises described in Plaintiff's Complaint, 102 Simons Pond Road in Colebrook, Connecticut (the "Premises") is adjacent to our property on 30 Cobb City Road.
5. My son was born August 20, 1996.

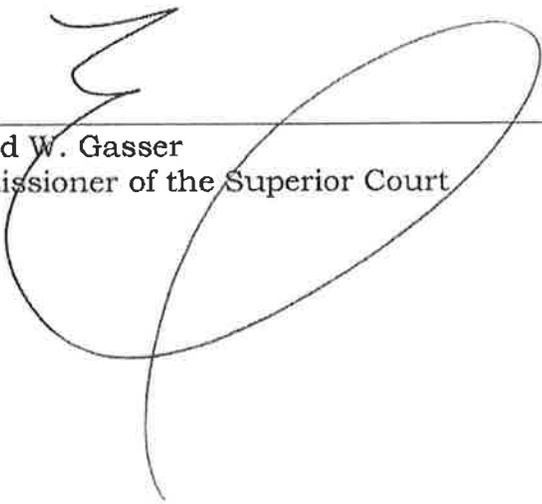
6. I have no knowledge of any time prior to March 8, 2014 when my son purposefully set fire to another person's property.
7. Prior to March 8, 2014, my son was never reprimanded, disciplined, etc., by me with regard to fire-related conduct.
8. Prior to March 8, 2014, I have no knowledge that my son was ever reprimanded, disciplined, etc., by his school with regard to fire-related conduct.
9. Prior to March 8, 2014, my son was never arrested for any fire-related conduct.
10. I am not aware of any facts evidencing that my son had a propensity to engage in fire-related conduct.
11. My son committed suicide on September 19, 2014.

Further, the Affiant sayeth not.

I hereby certify that I have reviewed the above Affidavit and that it is true and accurate to the best of my knowledge and belief.

Kathleen Riiska-Lovejoy
KATHLEEN RIISKA-LOVEJOY

Subscribed and sworn to before me
this 9th day of September, 2016.



Edward W. Gasser
Commissioner of the Superior Court

Exhibit C

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DOCKET NUMBER LLI CV-15-6013124S SUPERIOR COURT

RICHARD BLITZ, TRUSTEE OF THE
RICHARD BLITZ DEFINED BENEFIT
PENSION PLAN AND TRUST

-vs-

GLEN LOVEJOY AND
KATHLEEN RIISKA-LOVEJOY

:
:
:
:
:J.D. OF LITCHFIELD
:AT LITCHFIELD
:
:
:

DEPOSITION OF: RICHARD BLITZ
DATE: July 12, 2016
START TIME: 1:36 p.m.
END TIME: 3:57 p.m.
HELD AT: Gasser Law Firm, LLC
20 East Main Street
Avon, Connecticut

1 APPEARANCES

2
3 FOR THE PLAINTIFF, RICHARD BLITZ, TRUSTEE OF THE
4 RICHARD BLITZ DEFINED BENEFIT PENSION PLAN AND TRUST:

5 BENNECHE LAW FIRM

6 885 Hopmeadow Street

7 Simsbury, CT 06070

8 Telephone Number: (860) 658-4800

9 Fax Number: (860) 658-4818

10 E-mail Address: tom@benneche.com

11 By: Thomas G. Benneche, Esq.

12
13 FOR THE DEFENDANTS, GLEN LOVEJOY AND
14 KATHLEEN RIISKA-LOVEJOY:

15 GASSER LAW FIRM, LLC

16 20 East Main Street

17 Avon, CT 06001-3823

18 Telephone Number: (860) 674-8342

19 Fax Number: (860) 676-8912

20 E-mail Address: egasser@gasserlaw.com

21 By: Edward W. Gasser, Esq.

22 ROME MCGUIGAN, P.C.

23 One State Street

24 Hartford, CT 06103

25 Telephone Number: (860) 549-1000

Fax Number: (860) 724-3921

E-mail Address: ecanalia@rms-law.com

By: Erin E. Canalia, Esq.

ALSO PRESENT: Kathleen Riiska-Lovejoy

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WITNESS: RICHARD BLITZ

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(Defendants' Exhibits 1 through 16, retained
by Mr. Gasser)

STIPULATIONS

1
2 It is stipulated by counsel for the parties that
3 all objections are reserved until the time of trial,
4 except those objections as are directed to the form of
5 the question.

6
7 It is stipulated and agreed between counsel for
8 the parties that the proof of the authority of the
9 Commissioner before whom this deposition is taken is
10 waived.

11
12 It is further stipulated that any defects in the
13 notice are waived.

14
15 It is further stipulated that the reading and
16 signing of the deposition transcript by the witness may
17 be signed before any Notary Public.

1 (Deposition commenced at 1:36 p.m.)

2

3 (Defendants' Exhibit 1, Summons and
4 Complaint, marked for identification)

5

6 (Defendants' Exhibit 2, Letter, dated
7 March 27, 2014, marked for identification)

8

9 (Defendants' Exhibit 3, Victim/Witness
10 Statement of James Jonson, marked for
11 identification)

12

13 (Defendants' Exhibit 4, Investigation
14 Report, marked for identification)

15

16 (Defendants' Exhibit 5, Investigation
17 Report, marked for identification)

18

19 (Defendants' Exhibit 6, Photograph, marked
20 for identification)

21

22 (Defendants' Exhibit 7, Photograph, marked
23 for identification)

24

25

1 (Defendants' Exhibit 8, Photograph, marked
2 for identification)

3

4 (Defendants' Exhibit 9, Photograph, marked
5 for identification)

6

7 (Defendants' Exhibit 10, Property History,
8 marked for identification)

9

10 (Defendants' Exhibit 11, Document, marked
11 for identification)

12

13 (Defendants' Exhibit 12, Document, marked
14 for identification)

15

16 (Defendants' Exhibit 13, Document, marked
17 for identification)

18

19 RICHARD BLITZ, Deponent, having first been
20 duly sworn, deposes and states as follows:

21

22 DIRECT EXAMINATION BY MR. GASSER

23

24 Q Mr. Blitz, good afternoon. For the record
25 my name is Ed Gasser, and I represent the Lovejoys in

1 let me correct that, sir.

2 A Because if you --

3 Q Do you see the document references five
4 acres --

5 A Yes.

6 Q -- and a structure shown in the photograph,
7 correct?

8 A (Witness moving head up and down).

9 Q Now, does that document accurately reflect
10 the property as it was listed for sale at some point
11 before the fire?

12 A To be -- sir, I don't have any recollection
13 of that price in a certain time. I'm sorry.

14 Q Okay.

15 A But it does say it's with five acres, yes.

16 Q It was a --

17 A I don't even -- I don't even know who's
18 listing this is here.

19 Q Was the house and five acres ever listed for
20 sale?

21 A It's possible, yes.

22 Q Do you have an opinion -- withdrawn.

23 Showing you, sir, what I marked as Exhibit 1
24 for identification, which is your complaint, have you
25 seen a copy of that document, sir?

1 A Yes.

2 Q And if you would turn, sir, to what is the
3 third page of the exhibit -- the document doesn't have
4 any page numbers on them, but it's the third page of the
5 exhibit. About halfway down it has a heading entitled
6 "Second Count, Parental Liability for Negligence." Do
7 you see that?

8 A Yes.

9 Q Can you tell me what the -- withdrawn.
10 Before we get to that, if you could read
11 paragraph 8A to yourself, sir, and just tell me when
12 you're finished.

13 A (Witness complying). Does it stop at the
14 end of the page?

15 Q It does, sir.

16 A Then --

17 Q It ends with the period.

18 A Then I'm finished.

19 Q Okay.

20 Do you have any knowledge that the Lovejoys'
21 son Owen was ever in the house, if you will for lack of
22 a better phrase, prior to March 8, 2014?

23 A Do I know whether he was in the house prior
24 to the fire?

25 Q Yes, sir.

1 A I don't know.

2 Q Okay. And then going back to that paragraph
3 I had you read, paragraph 8A, it reads that my clients
4 were negligent, and it sets forth two ways, par --
5 subparagraph A and subparagraph B. Subparagraph A says
6 they, being my client, the Lovejoys, failed to exercise
7 reasonable care in controlling their minor child so as
8 to prevent him from causing harm to the plaintiff's
9 property.

10 Do you see that, sir?

11 A Yes.

12 Q What's the basis of that allegation, sir?

13 A Sir, I'm not an attorney. I would leave
14 that to my attorney to explain.

15 Q But it's your complaint, sir. You're making
16 the allegation that my clients were negligent because
17 they failed to exercise reasonable care in controlling
18 their son. So I'm just trying to find out, sir, what
19 the basis of your allegation is.

20 A That's why you hire an attorney. And I pay
21 an attorney because this is legal language. I'd rather
22 not get involved in in interpreting it.

23 Q Well, you may not want to, sir, but it's
24 your allegation. You've made a statement that my
25 clients failed to exercise reasonable care in

1 controlling their son, and I want to know, sir, what the
2 basis of that is, if any?

3 A Well, to my knowledge he was being treated.

4 Q Okay.

5 A And I don't have all that informa -- I've
6 been -- I hope to see that information.

7 Q As of today, sir -- withdrawn.

8 As of the date of your complaint, which is
9 December 3, 2015, what was the basis of that claim that
10 they failed to exercise reasonable care in controlling
11 their 17-year old son?

12 A I would leave that to my attorney to answer.

13 Q Do you have any -- what basis do you have,
14 sir, not what your attorney says because your attorney
15 would object if I took his deposition? So what I want
16 to know is what basis you have, sir, for the allegation
17 in your complaint of that allegation?

18 A Well, I was aware that he was being treated.

19 Q Okay. Other than that, sir, any knowledge
20 -- any basis for the allegation in paragraph 8A?

21 A As I said before, I defer to my attorney
22 because that's his language. I didn't write it.

23 Q It's your complaint, sir.

24 A It's my complaint, and it's my attorney that
25 represents me that filed it so I would leave that to

1 lawyers to interpret.

2 Q Other than the fact that Owen was being
3 treated, do you have any basis for the allegation?

4 A Again, I'm going to answer the same thing.
5 This isn't my language. I didn't draft it. It's
6 written by an attorney, and I leave it to him to explain
7 to you in however form you want necessary what it means.
8 I don't want to interpret his language.

9 Q What do you believe, sir, in your own words
10 my clients did wrong that led to the fire?

11 A That he was able to enter the house and burn
12 it down.

13 Q Okay. And how is it that you believe my
14 clients should have stopped their 17-year-old son from
15 doing that, sir? Chain him to the house perhaps?

16 MR. BENNECHE: Objection to form.

17 You can answer it.

18 THE WITNESS: Well, I can't answer that
19 completely because I haven't -- I don't have the
20 knowledge of all the documents that I've been waiting
21 for regarding the actual interviews and the actual
22 treatment and what was involved in the treatment. So
23 I'd rather wait until I see that to answer the question.

24 Q (By Mr. Gasser) You don't have any
25 information to support the allegation as of this

1 afternoon, correct?

2 A Well, the police report -- in the police
3 report, he wanted to go back there, and maybe he never
4 should have left there. Go back to the institute he was
5 being treated at.

6 Q Okay. If you go to subparagraph B, sir, the
7 next page, the paragraph reads in relevant part that my
8 clients knew or should have known that their son
9 possessed a disposition and propensity to cause the
10 damage. Do you see that, sir?

11 A Yes.

12 Q That's your allegation, correct?

13 A Well, again, that's my attorney's language.

14 Q Do you have any knowledge that prior to
15 March 8, 2014, Owen set fire to any property at any
16 point?

17 A Set fire?

18 Q Yes, sir.

19 A No.

20 Q And why did you allege that he did that
21 without any knowledge, sir?

22 A Well, it doesn't say set fire there. It
23 says has a propensity to cause the damage.

24 Q The damage?

25 A Yes.

1 Q And the damage was caused by a fire,
2 correct?

3 A Yes.

4 Q So isn't that what -- isn't what you're
5 alleging is that he possessed a disposition and
6 propensity to start a fire?

7 A A propensity to start the fire, but --

8 Q Right.

9 A -- that isn't necessary that he had caused
10 fires before to have that propensity.

11 Q And what's the basis for the claim that he
12 had a propensity to do that?

13 A Well, again, I will defer to my attorney who
14 is the author of that. I know in the police report I
15 read things about problems -- things he was doing at
16 school. And that may indicate a propensity what may be
17 forthcoming in the -- the medical reports may indicate a
18 propensity. I don't have that information.

19 Q Did anyone, sir, in the five years prior to
20 March 8, 2014, ever offer to purchase your property, the
21 house and any amount of land for any amount of money?

22 A I'm not sure. And the reason I say that is
23 because brokers make offers, but you don't really know
24 until you actually have a written offer whether it's a
25 real offer or not.

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STATE OF CONNECTICUT

I, Kathleen A. Morin, a Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to notice there came before me on the 12th day of July, 2016, the following-named person, to wit: RICHARD BLITZ, who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further testify that I am neither attorney nor counsel for nor related to nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

WITNESS my hand and seal this 23rd day of July, 2016.

Kathleen A. Morin

Kathleen A. Morin, Notary Public

My Notary Expires: March 31, 2018

Exhibit D

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 : AUGUST 12, 2016

SUPPLEMENTAL COMPLIANCE

Defendants, Glen Lovejoy and Kathleen Riiska-Lovejoy, in accordance to with their continuing duty to disclose under Practice Book § 13-15, hereby supplement their compliance to Plaintiff's Interrogatories and Requests for Production dated March 9, 2016 as follows:

INTERROGATORIES

9. State all medical and psychological conditions your son was diagnosed with and for and state the dates of such diagnosis, who made them and what course of treatment was recommended and/or employed.

RESPONSE: **Objection - see objection previously filed. Without waiving this objection, see records from the following providers attached: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional medical records to be provided upon receipt.**

10. State all medications your son was prescribed during his lifetime and for each one indicate the person who prescribed same, that person's contact information and the reason why each prescription was made.

RESPONSE: **Objection - see objection previously filed. Without waiving this objection, see records from the following providers attached: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute**

redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional information regarding medications from January 1, 2010 forward to be provided upon receipt.

18 Identify any support and/or therapy groups your son belonged to or attended and for each one, state their address, contact information and date(s) your son attended same.

RESPONSE: Owen was never in any support or therapy group. He received counseling subject to his major depressive event in 2013, but not before. See records from the following providers attached: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional information regarding support and/or therapy groups to be provided upon receipt.

REQUESTS FOR PRODUCTION

2. All medical and psychological records of your son evidencing the information contained in your answers to the interrogatories propounded to you herewith.

RESPONSE: Objection - see objection previously filed. Without waiving this objection, see records from the following providers attached: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional medical records to be provided upon receipt.

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

By: _____

**Edward W. Gasser, Esq.
Gasser Law Firm, LLC
20 East Main Street
Avon, CT 06001-3823
Juris No. 421213
Telephone: 860-674-8342
Facsimile: 860-676-8912
egasser@gasserlaw.com**

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:

Zisca St. Clair, Esq.
Rome McGuigan PC
1 State Street
Hartford, CT 06103
zstclair@rms-law.com

Thomas G. Benneche, Esq.
885 Hopmeadow Street
Simsbury, CT 06070
tom@benneche.com

Edward W. Gasser
Commissioner of the Superior Court

DOCKET NO. LLI CV-15-6013124S : SUPERIOR COURT
RICHARD BLITZ, TRUSTEE OF THE :
RICHARD BLITZ DEFINED BENEFIT : J.D. OF LITCHFIELD
PENSION PLAN AND TRUST :
VS. : AT LITCHFIELD
GLEN LOVEJOY AND :
KATHLEEN RIISKA-LOVEJOY : AUGUST 29, 2016

SUPPLEMENTAL COMPLIANCE

Defendants, Glen Lovejoy and Kathleen Riiska-Lovejoy, in accordance to with their continuing duty to disclose under Practice Book § 13-15, hereby supplement their compliance to Plaintiff's Interrogatories and Requests for Production dated March 9, 2016 as follows:

INTERROGATORIES

9. State all medical and psychological conditions your son was diagnosed with and for and state the dates of such diagnosis, who made them and what course of treatment was recommended and/or employed.

RESPONSE: **Objection - see objection previously filed. Without waiving this objection, see records produced August 12, 2016 from the following providers: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. See also the records attached from the following providers: Kenneth M. Selig, M.D., and Community Mental Health Associates. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional medical records to be provided upon receipt.**

10. State all medications your son was prescribed during his lifetime and for each one indicate the person who prescribed same, that person's contact information and the reason why each prescription was made.

RESPONSE: **Objection – see objection previously filed. Without waiving this objection, see records produced August 12, 2016 from the following providers: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. See also the records attached from the following providers: Kenneth M. Selig, M.D., and Community Mental Health Affiliates. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional information regarding medications from January 1, 2010 forward to be provided upon receipt.**

18 Identify any support and/or therapy groups your son belonged to or attended and for each one, state their address, contact information and date(s) your son attended same.

RESPONSE: **Owen was never in any support or therapy group. He received counseling subject to his major depressive event in 2013, but not before. see records produced August 12, 2016 from the following providers: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. See also the records attached from the following providers: Kenneth M. Selig, M.D., and Community Mental Health Affiliates. The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional information regarding support and/or therapy groups to be provided upon receipt.**

REQUESTS FOR PRODUCTION

2. All medical and psychological records of your son evidencing the information contained in your answers to the interrogatories propounded to you herewith.

RESPONSE: **Objection – see objection previously filed. Without waiving this objection, see records produced August 12, 2016 from the following providers: Donna Bouchard, APRN; Anxiety Treatment Center, LLC; Hartford Hospital; The Institute of Living; Charlotte Hungerford Hospital; and Dennis Kobylarz, M.D. See also the records attached from the following providers: Kenneth**

M. Selig, M.D., and Community Mental Health Affiliates.
The attached medical records contain redactions as set forth in the Privilege Log served on the plaintiff on the above-captioned date. Additional medical records to be provided upon receipt.

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

By: _____

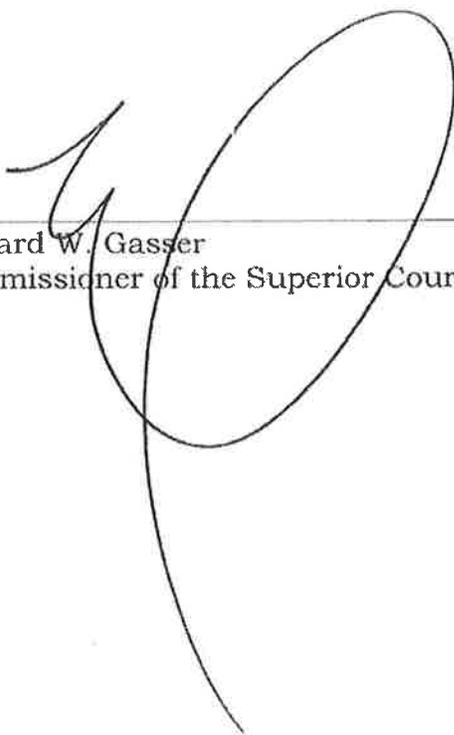

**Edward W. Gasser, Esq.
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20 East Main Street
Avon, CT 06001-3823
Juris No. 421213
Telephone: 860-674-8342
Facsimile: 860-676-8912
egasser@gasserlaw.com**

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:

Zisca St. Clair, Esq.
Rome McGuigan PC
1 State Street
Hartford, CT 06103
zstclair@rms-law.com

Thomas G. Benneche, Esq.
885 Hopmeadow Street
Simsbury, CT 06070
tom@benneche.com



Edward W. Gasser
Commissioner of the Superior Court

Exhibit E

2003 WL 460335

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford-Norwalk.

William ROBYN, et al.,

v.

Nolan PALMER-SMITH, et al.

No. CV990174453.

|
Feb. 5, 2003.

Attorneys and Law Firms

Corsello & Cohen, LLC, Norwalk and Casper & Detolledo, LLC, Stamford, for William Robyn.

Peter D. Clark Law Offices, Shelton, for Nolan Palmer-Smith.

O'Keefe Phelan & Jackson, Hartford, for Mern Palmer-Smith.

Pullman & Comley, LLC, Bridgeport and William Melley, III, Hartford, for Christopher Morin.

Opinion

WILLIAM B. LEWIS, Judge.

*1 This is an action by the plaintiff, William Robyn, through his parent, Peter Robyn, against the defendant, Mern Palmer-Smith (the defendant), and her minor son, Nolan Palmer-Smith (Nolan), for injuries the plaintiff allegedly sustained as a result of Nolan's conduct. The plaintiff alleges that on September 26, 1997, the plaintiff and Nolan, who lived in his mother's home where the incident took place, ingested hallucinogenic substances. While under the influence of the substance, the plaintiff claims Nolan perceived him as being out of control and attempted to subdue him by kicking and punching the plaintiff repeatedly. Nolan also, allegedly, struck the plaintiff in the head with a shovel and rammed his head into a tree. As a result, the plaintiff sustained serious injuries.

On October 9, 2001, the defendant, Mern Palmer-Smith, moved (155) for summary judgment. The defendant argues that she is entitled to judgment as a matter of law because the "doctrine of parental immunity" applies and the plaintiff cannot satisfy the requirements of either exception to the doctrine. The defendant further argues that there are no questions of material fact regarding whether Nolan had dangerous tendencies of which the defendant either was or should have been aware, and that the plaintiff cannot produce any evidence to raise any issues of material fact. The plaintiff responds that because Nolan was involved with marijuana prior to the incident in question, because he attended a school where other students used drugs and alcohol, because he was on his school's wrestling team, because his mother could not point to specific occasions during which she expressed her negative opinions about drug use, and because, on the day of the incident in question, she attended a social event in New York City and did not arrange for someone to watch her sixteen-year-old son while she was out, genuine issues of material fact exist regarding whether the defendant satisfied the standard of care in controlling her son's conduct.

"Summary judgment procedure is designed to dispose of actions in which there is no genuine issue as to any material fact." (Internal quotation marks omitted.) *Fraser v. United States*, 236 Conn. 625, 639, 674 A.2d 811, cert. denied, 519 U.S. 872, 117 S.Ct. 188, 136 L.Ed.2d 126 (1996). It is a "method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Wilson v. New Haven*, 213 Conn. 277, 279, 567 A.2d 829 (1989). It is well-established that "[t]he party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law ... and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." (Citation omitted; internal quotation marks omitted.) *Gaynor v. Payne*. 261 Conn. 585, 590-91, 804 A.2d 170 (2002).

Doctrine of Parental Immunity

*2 This is not the first time the defendant has mischaracterized the doctrine of parental immunity and has asserted it as a bar to liability when applied to the facts of this case. Relying on the Supreme Court's decision in *Crotta v. Home Depot, Inc.*, 249 Conn. 634, 732 A.2d 767 (1999), on March 3, 2000, the defendant moved to strike count two of the plaintiff's complaint and asserted the argument that the action was barred by the doctrine of parental immunity. The court, D'Andrea, J., held that both the holding in *Crotta* and the doctrine of parental immunity were inapplicable to the facts in this case. See *Robyn v. Palmer-Smith*, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. CV 99 0174453 (February 20, 2001, D'Andrea, J.). For the reasons set forth below, this court agrees and holds, in this case, that the doctrine of parental liability is an inappropriate argument on which to base summary judgment for the defendant.

The doctrine of parental immunity “bars an unemancipated child from suing his or her parents for personal injuries ... Under this doctrine a parent is not liable civilly to his child for personal injury inflicted during [the child's] minority ...” (Citations omitted; emphasis added; internal quotation marks omitted.) *Crotta v. Home Depot, Inc.*, *supra*, 249 Conn. at 638. In this case, no unemancipated child is suing his or her own parents for personal injuries; rather, the plaintiff is suing Nolan Palmer-Smith and Nolan Palmer-Smith's mother for injuries the plaintiff allegedly sustained as a result of Nolan's actions.

The Supreme Court also concluded “that the doctrine of parental immunity operates to preclude the parent of a minor plaintiff from being joined as a third party defendant for purposes of apportionment of liability, contribution or indemnification based on the parent's allegedly negligent supervision of the minor plaintiff.” *Crotta v. Home Depot, Inc.*, *supra*, 249 Conn. at 644-45. Here, the defendant is not the parent of a minor plaintiff and is not being joined as a third party defendant for any purpose. Rather, this case involves a situation where the plaintiff seeks recovery from a minor defendant and his co-defendant mother for the minor defendant's acts. Therefore, because this court does not find the defendant's liability is, as a matter of law, barred by the doctrine of parental immunity, this argument is not a sound basis for summary judgment in favor of the defendant.

Parental Liability for a Child's Tort

The defendant asserts, correctly, that “[a]t common law, the torts of children do not impose vicarious liability upon parents qua parents ...” (Citation omitted.) *Kaminski v. Fairfield*, 216 Conn. 29, 34, 578 A.2d 1048 (1990). Our Supreme Court has explained that liability did not extend “unless [the parents] themselves were independently negligent, as where they had entrusted a dangerous instrumentality to their children or had failed to restrain their children who they knew possessed dangerous tendencies.” *LaBonte v. Federal Mutual Ins. Co.*, 159 Conn. 252, 256, 268 A.2d 663 (1970). Section 316 of the Restatement (Second) of Torts explains: “A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control.” See *Repko v. Seriani*, 3 Conn. Cir. Ct. 374, 376, 214 A.2d 843 (1965) (quoting 2 Restatement (Second) of Torts § 316 (1965)).

*3 Because the plaintiff has not alleged that the defendant entrusted her son with a dangerous instrumentality, this court must decide whether, viewing “the evidence in the light most favorable to the nonmoving party”; *Buell Industries Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 550, 791 A.2d 489 (2002); a question of material fact exists as to whether the defendant, having the ability to do so, failed to restrain her child who she either knew or should have known possessed dangerous tendencies. For the reasons set forth below, this court finds that no genuine issue of material fact exists and the defendant is entitled to judgment in her favor as a matter of law.

The defendant argues that the plaintiff cannot show “1. that [Nolan Palmer-Smith's] alleged dangerous tendency, drug use, has a dangerous tendency to harm others; 2. that the defendant ... knew or should have known that Nolan Palmer-Smith was engaged in drug activity; and 3. that the defendant ... failed to restrain her child properly.” She maintains not only that the plaintiff has no evidence that drug use constitutes a dangerous tendency, but also suggests that drug use is a “poor personal choice” and has little, if any,

connection to the injury of another. In addressing the second requirement, the defendant, assuming *arguendo* that drug use is a dangerous tendency, contends the plaintiff cannot present any evidence which shows that the defendant knew or should have known that her son was involved in drug activity. Finally, the defendant argues that even if drug use is a dangerous tendency, even if she either knew or should have known that her son had dangerous tendencies, the plaintiff has no evidence to show that the defendant had reason to suspect that the drug use could lead to injury of another and that she had a "reasonable way" of restraining her son. The defendant has submitted a "Drug/Alcohol Evaluation Report" by Leonard A. Kenowitz, Ph.D./CADC and her own affidavit to support her motion for summary judgment.

In response, the plaintiff has presented a certified transcript of the defendant's deposition taken January 8, 2002. To rebut the defendant's arguments, in his memorandum in opposition, the plaintiff continually points to sections of the transcript where: the defendant admits knowledge of Nolan's use of marijuana prior to the incident which is the subject of this action; the defendant admits knowledge of drug and alcohol use by children who attended Nolan's school around the time during which the incident which is the subject of this action occurred; although she claimed her children knew her negative opinion of and intolerance of drug use, the defendant could not relate an exact conversation where she expressed these opinions; and the defendant admits knowledge of Nolan's membership on his school's wrestling team. The plaintiff also focuses on the defendant's own work and social plans and knowledge of her son's whereabouts on September 26, 1997, the day of the incident.

*4 Our Supreme Court has "emphasize[d] the important point, that [a]lthough the party seeking summary judgment has the burden of showing the nonexistence of any material fact ... a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue ... It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact ... are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment]." (Internal quotation marks omitted.) *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, *supra*, 259 Conn. at 550.

The plaintiff has not disclosed any evidence to support his contention that Nolan had any dangerous tendencies, drug use or otherwise, of which the defendant either was or should have been aware. Although the plaintiff has revealed, through the defendant's deposition testimony, that Nolan was implicated in a situation involving marijuana, the plaintiff has not submitted any evidence that Nolan's involvement with marijuana either created, encouraged or was indicative of a tendency within him to harm others. While, as the plaintiff asserts, wrestling may be an aggressive sport, the plaintiff has submitted no evidence tending to show that Nolan's participation in the school-sponsored extracurricular activity either created, encouraged or was indicative of a dangerous tendency.

In addition to the involvement with marijuana and participation on the wrestling team, to support his contention that the defendant either knew or should have known that the defendant had a tendency to harm others and had a duty to control her son's actions, the plaintiff relies further on the defendant's admission that she was aware of drug and alcohol use among Nolan's schoolmates, and that, although she claims that her children were aware of her feelings about drug use, the defendant could not refer to any specific conversations with Nolan during which she expressed her opinions.

"Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner." (Internal quotation marks omitted.) *Fogarty v. Rashaw*, 193 Conn. 442, 446, 476 A.2d 582 (1984). Summary judgment is particularly "ill-adapted to negligence cases, where ... the ultimate issue in contention involves a mixed question of fact and law, and requires the trier of fact to determine whether the standard of care was met in a specific situation ... [T]he conclusion of negligence is necessarily one of fact ..." (Citations omitted; internal quotation marks omitted.) *Michaud v. Gurney*, 168 Conn. 431, 434, 362 A.2d 857 (1975). The plaintiff correctly argues that whether the defendant used reasonable care in controlling her son is a question of fact; this argument, however, presupposes the existence of a duty, and it is well established that "[t]he existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand ." (Internal quotation marks

omitted.) *Mendillo v. Board of Education*, 246 Conn. 456, 483, 717 A.2d 1177 (1998).

*5 As quoted above, “[a] very clear enunciation of the duty of parents to control the conduct of their children is to be found in the Restatement, 2 Torts, § 316, as follows: ‘A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control.’” *Repko v. Seriani*, *supra*, 3 Conn.Cir.Ct. at 376. Therefore, at common law, a parent’s duty to control his or her child is not absolute and a parent is not strictly liable for his or her child’s conduct. As in most questions of duty, foreseeability is involved. The problem for the law is to determine, in hindsight, what harm is foreseeable. The Supreme Court has held that one must consider the “attenuation between [the defendant’s] conduct, on the one hand, and the consequences to and the identity of the plaintiff, on the other hand.” *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 387-88, 650 A.2d 153 (1994).

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.

It is understood that summary judgment “is appropriate only if a fair and reasonable person could conclude only one way.” *Miller v. United Technologies Corp.*, 233 Conn. 732, 751, 660 A.2d 810 (1995). “[A] summary disposition ... should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party.” (Internal quotation marks omitted.) *Id.*, at 752. “[A] directed verdict may be rendered only where, on the evidence viewed in the light most favorable to the nonmovant, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed.” (Emphasis in original.) *Id.*

Based on the evidence presented, viewed in the light most favorable to the plaintiff, this court holds that, in this situation, the defendant did not have a duty to exercise reasonable care to control the conduct of her minor child. Therefore, the defendant is entitled to judgment as a matter of law and her motion for summary judgment is granted.

*6 So Ordered.

All Citations

Not Reported in A.2d, 2003 WL 460335

Smith v. Sunbury

Superior Court of Connecticut, Judicial District of New Haven at New Haven

July 22, 2011, Decided; July 22, 2011, Filed

NNHCV106010501

Reporter

2011 Conn. Super. LEXIS 1914; 2011 WL 3671962

Jo-Ann Smith, Administratrix of the Estate of Shane Smith v. John Sunbury et al.

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: [*1] Richard E. Burke, Judge.

Opinion by: Richard E. Burke

Opinion

MOTION FOR SUMMARY JUDGMENT #123

FACTS

The present action was previously before this court on the plaintiff's June 16, 2010 motion to strike the defendants' special defenses. This court decided that motion on December 29, 2010 and now looks to its decision in reciting the present action's facts and procedural history: "The plaintiff, Jo-Ann Smith, commenced the present action by service of process against the defendants, Christopher Sunbury, John Sunbury¹ and Margery Sunbury, on April 22, 2010. The plaintiff brings the present action in her capacity as the administratrix of the estate of Shane Smith, her deceased son (the decedent). John Sunbury and Margery Sunbury are the parents of Christopher Sunbury. Because they are the only defendants [involved in] the present motion, they will be hereinafter called the defendants. The four-count complaint alleges the following facts. On or about August 7, 2008, Christopher Sunbury was swinging a samurai sword on

a public street in Wallingford, in the presence of a large group of individuals. The decedent was among them. He was struck by the sword and sustained serious injury to his left arm. He was then taken [*2] to Midstate Medical Center, where he died on or about August 8, 2008. The following counts comprise the complaint. Count one is against Christopher Sunbury and sounds in negligence. Count two is against the defendants and sounds in negligence. Counts three and four are brought against the defendants individually and sound in parental liability for a minor's torts, pursuant to Connecticut General Statutes §52-572."² *Smith v. Sunbury*, Superior Court, judicial district of New Haven, Docket No. CV 10 6010501, 2010 Conn. Super. LEXIS 3363 (December 29, 2010, Burke, J.).

The following procedural history is also relevant. Christopher Sunbury filed a motion to consolidate the present action with *Smith v. Midstate Medical Center*, Superior Court, judicial district of New Haven, Docket No. CV 10 6013753, on February 28, 2011 (companion action). That action was also brought by the plaintiff in this action, and it is based upon the medical treatment received by the decedent for the injuries he sustained during the August 7, 2008 incident. The defendants in the companion action filed apportionment complaints against, *inter alia*, the defendants in the present action on December 29, 2010 and January 3, 2011. The operative complaint [*3] in the companion action is the amended version filed on February 4, 2011.³ The

² Section 52-572(a) provides in relevant part: "The parent or parents or guardian . . . of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause . . . injury to any person . . . shall be jointly and severally liable with the minor or minors for the . . . injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the . . . injury if they had been adults."

³ The plaintiff recently filed a subsequent amended complaint on July 18, 2011. Per Practice Book §10-60(a)(3), however, the other parties in the companion action have fifteen days to object to it. The operative complaint in the companion action therefore remains the February 4, 2011 version.

¹ On July 1, 2011, defense counsel filed a suggestion of death to inform the court and plaintiff's counsel that John Sunbury died on June 19, 2011.

plaintiff amended the complaint in the companion action in order to add counts against Christopher Sunbury and the defendants, following the commencement of the apportionment actions against them. The counts against the defendants are as follows. The tenth count is against the defendants and sounds in negligence. The eleventh and twelfth counts are against Margery Sunbury and John Sunbury, respectively, and they both sound in parental liability under §52-572. The court, Lager, J, granted Christopher Sunbury's motion to consolidate on March 28, 2011.

After this court's decision on the plaintiff's motion to strike, the following special defenses remain in the present action. First, the defendants allege that "the plaintiff's decedent was a provocateur of the incident, thereby proximately and substantially contributing to his own injuries." Second, the defendants allege: "At the time of the actions alleged in the complaint, and for sometime prior thereto, the defendant, Christopher J. Sunbury, was not living with his parents, leaving them with no opportunity to control his actions." The defendants now move for [*4] summary judgment on the counts that have been brought against them in the complaints for the present action and the companion action. They filed their motion, a memorandum of law in support thereof and exhibits on March 31, 2011. The plaintiff in turn filed her opposition to the motion on May 11, 2011. The plaintiff's opposition adopts and incorporates the opposition filed by certain of the defendants/apportionment plaintiffs in the companion action on May 10, 2011. The court will hereinafter refer to the plaintiff in the present action and the opposing defendants/apportionment plaintiffs in the companion action collectively as the nonmovants. The defendants then filed a reply memorandum on May 18, 2011. The court heard the matter at short calendar on June 6, 2011.

DISCUSSION

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." (Citations omitted.) *Wilson v. New Haven*, 213 Conn. 277, 279, 567 A.2d 829 (1989). [*5] "However, since litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Citation omitted; internal

quotation marks omitted.) *Kakadelis v. DeFabritis*, 191 Conn. 276, 282, 464 A.2d 57 (1983). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party . . . [A] directed verdict may be rendered only where, on evidence viewed in the light most favorable to the nonmovant, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; internal quotation marks omitted.) *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment [*6] has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly [*7] presented to the court . . ." (Internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 10-11, 938 A.2d 576 (2008).

The defendants move for summary judgment on the following grounds. First, they are entitled to a judgment as a matter of law on the counts sounding in parental liability under §52-572 because there is no genuine issue of material fact that they lacked control over their son at the time of the incident. Second, they are entitled to a

judgment as a matter of law on the counts sounding in negligence because there is no genuine issue of material fact regarding their knowledge of the samurai sword or their ability to foresee the incident. Their reply memorandum repeats and elaborates upon these arguments.

The nonmovants oppose the present motion for the following reasons. First, control is not a criterion for establishing liability under §52-572, because the word "control" does not appear in the statute. Second, even if the court accepted the defendants' argument that control is a prerequisite to liability under §52-572, it should still deny the motion, because the defendants cannot establish their alleged lack of control on the sole basis [*8] that their son was not living with them at the time of the incident. Third, the incident was foreseeable to the defendants, because they once called the police after their son caused damage to their house. Finally, in arguing that they did not know about the samurai sword, the defendants rely on Christopher Sunbury's failure to respond to their requests for admissions, but they should not be able to do so because Christopher Sunbury is currently incarcerated and therefore may be unable to answer the defendants' requests.

As the nonmovants note, this court has already held that lack of control over a minor is a viable special defense to a cause of action sounding in parental liability under §52-572: "In *Gearity v. Salvo*, [40 Conn.Sup. 185, 186, 485 A.2d 940 (1984),] which involved a statutory parental liability cause of action, the court denied the plaintiff's motion to strike one defendant parent's special defense alleging that the other defendant parent 'had exclusive care, custody and control of their minor child at the time of the acts complained of and for some time prior thereto.' The court based its decision on its conclusion that 'control of the minor' is a determining factor [*9] in the imposition of liability under §52-572.' *Id.*, 187. In deciding the motion, the court contrasted the facts of *Gearity* with the facts of *Repko v. Seriani*, 3 Conn. Cir.Ct. 374, 377, 214 A.2d 843 (1965), in which the court held that the defendant father was liable for his minor son's conduct under §52-572 where 'the son was under the control of his father . . . although he was technically in the custody of the state.'" *Smith v. Sunbury*, *supra*, Superior Court, Docket No. CV 10 6013753.

In coming to its conclusion, the *Gearity* court noted: "While the plain meaning of §52-572 dictates . . . that the mere relation of parent and child is enough to impose statutory liability upon a parent, the courts have

not construed the statute so strictly. Rather, some courts have drawn a distinction between technical custody and actual control of the minor in order to impose liability upon the parent. *Repko v. Seriani*, [*supra*,] 376-77 . . . *Gillespie v. Gallant*, 24 Conn. Supp. 357, 1 Conn. Cir. Ct. 594, 190 A.2d 607 (1963). The courts have noted that . . . §52-572 was intended to combat the rise of juvenile delinquency by obligating parents to control their minor children so as to prevent them from intentionally harming others. [*10] *Repko v. Seriani*, *supra*, 377; *Lutteman v. Martin*, 20 Conn.Sup. 371, 375, 135 A.2d 600 (1957)." *Gearity v. Salvo*, *supra*, 40 Conn.Sup. 187.

"The law of the case is not written in stone but is a flexible principle of many facets adaptable to the exigencies of the different situations in which it may be invoked . . . In essence it expresses the practice of judges generally to refuse to reopen what has been decided and is not a limitation on their power . . . A judge should hesitate to change his own rulings in a case . . ." (Internal quotation marks omitted.) *Bowman v. Jack's Auto Sales*, 54 Conn.App. 289, 293, 734 A.2d 1036 (1999). By arguing that "the issue of control should not factor into the Court's decision in the present case," the nonmovants essentially ask the court to change its decision regarding the legal sufficiency of the defendants' "lack of control" special defense. The court declines to do so. The nonmovants' argument here consists only of cursory references to the plain language of the statute and the legislative intent underlying it. Their argument is thus unconvincing, given the applicability of *Gearity* and the law of the case doctrine, and the court will not adopt it [*11] in deciding the present motion.

The court now considers the issue of whether the defendants have met their initial burden of establishing with evidence that there is no genuine issue of material fact about whether they had control over their son at the time of the incident. In support of the present motion, the defendants have submitted affidavits in which they each attest to the following. Christopher Sunbury was estranged from the defendants at the time of the incident. Approximately one month before the incident, he left the defendants' residence after damaging it during a disagreement. His conduct caused Margery Sunbury to contact local police and seek a warrant for his arrest. He then moved to an address unknown to them. The defendants were therefore unaware of his location, let alone his conduct, between the date that he moved out and the date that he allegedly injured the plaintiff. The conduct of which the defendants were unaware includes

Christopher Sunbury's access to, ownership of or possession of the samurai sword. After the incident, he did not return to the defendants' residence. The defendants have not provided him with financial support since he left their residence.

The [*12] defendants have also submitted the following unanswered requests for admissions that were directed to Christopher Sunbury. He purchased the samurai sword with his own money. When he did so, he had been living at a location unknown to the defendants for at least two weeks. The defendants did not know that he purchased the sword. They had no reason to know that he purchased the sword. Practice Book §13-23(a) provides in relevant part: "Each matter of which an admission is requested is admitted unless, within thirty days after the filing of the notice required by Section 13-22(b), or within such shorter or longer time as the judicial authority may allow, the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his attorney." Because Christopher Sunbury has not served the defendants with a written answer or objection in response to their requests, they now argue that they may treat the allegations contained in the requests as admitted. The court agrees and proceeds accordingly.⁴

The nonmovants argue that genuine issues of material fact remain because the defendants cannot

⁴As previously noted, the nonmovants argue, without providing any legal support, that "the Court should not rule on the Apportionment Defendants' Motion for Summary Judgment" because "Christopher Sunbury is currently incarcerated," and "there may be difficulties presented in being incarcerated which prevent him from answering the request to admit." While the court is aware of such difficulties, it nonetheless rejects the nonmovants' argument. Christopher Sunbury filed a motion for a sixty-day extension of time to respond to the defendants' requests for admissions, which was granted by the court, Alexander, J., on November 1, 2010. Thus, Christopher Sunbury had until January 12, 2011 to respond to the defendants' requests for admissions. More than half a year has passed since then. The court is compelled to conclude that the allegations contained in the requests have been admitted, given the clear language in Practice Book §13-23(a) and the court's disinclination to provide an extension of time that is sought by parties to whom the requests are not directed.

Similarly, the court notes that Christopher Sunbury filed a motion for a thirty-day extension of time to oppose the present motion on April 11, 2011. It was granted by operation of Practice Book §17-45. The time provided by the Practice Book and the thirty-day extension for Christopher Sunbury to respond to the present motion has passed. Therefore, the court further concludes that he does not oppose the present motion.

[*13] establish their lack of control over their son on the basis that he "was living outside of their home at the time he struck Shane Smith" and therefore was "no longer their responsibility." The court rejects the nonmovants' argument. The evidence, even when viewed in the light most favorable to the nonmovants, establishes that the defendants had been wholly unaware of Christopher Sunbury's whereabouts for approximately one month when the incident occurred. Thus, the defendants claim that they lacked control over their son, not only because they were unaware of his conduct, but also because they were unable to access him, contact him or find out about his conduct between the time that he left and the time of the incident, such that they would have had the ability or opportunity to control it.

The relationship between parental "control" and §52-572 was addressed in *Watson v. Gradzik*, 34 Conn. Supp. 7, 8-10, 373 A.2d 191 (1977): "Parents and those in loco parentis . . . not only have a deep, immediate and personal interest in the welfare of their children and wards but, under law, may enforce correction for the unruly conduct of their charges and compel obedience in all matters, whether of [*14] a legal, moral or familial nature . . . Because parents do have the authority to compel obedience of their children, it would not seem unreasonable to hold them responsible for exercising that authority . . . One reason [underlying the passage of the statute] is to deter juvenile delinquency by placing upon the parent the obligation to control his minor child so as to prevent him from intentionally harming others." (Citations omitted.) Again, even when viewed in the light most favorable to the plaintiff, the available evidence establishes that no genuine issue of material fact exists about whether the defendants were in the position to correct Christopher Sunbury's conduct, compel his obedience and/or control him in order to prevent him from intentionally harming others, given that they did not know where he was living or how they could contact him for approximately one month prior to the incident.

The nonmovants have not demonstrated otherwise. They instead argue, without citing to legal authority or providing illustrative examples, that the defendants "have failed to remove all issues of fact as to the issue of control" because "[a] jury may well determine that there are other factors [*15] to consider in determining whether John and Margery Sunbury were negligent in supervising their minor son." The nonmovant's argument is again unpersuasive, and it is an insufficient basis for them to meet their burden on summary

judgment. See, e.g., *Ramirez v. Health Net of the Northeast, Inc.*, *supra*, 285 Conn. 11. Accordingly, the defendants are entitled to a judgment as a matter of law, and the court grants their motion on the counts against them in the operative complaints for the present action and the companion action that sound in parental liability under §52-572.⁵

The court now turns its attention to the counts against the defendants that sound in negligence. The plaintiff specifically alleges that the defendants were negligent because they knew or should have known that their son's possession of the samurai sword was dangerous and unreasonable and nonetheless failed to limit, monitor and/or prevent his use of it. "At common law, the torts of children do not impose vicarious liability upon parents qua parents, although parental liability may be created by statute; see . . . §52-572; or by independently negligent behavior on the part of parents. *LaBonte v. Federal Mutual Ins. Co.*, 159 Conn. 252, 256, 268 A.2d 663 (1970)." [*16] *Kaminski v. Fairfield*, 216 Conn. 29, 34, 578 A.2d 1048 (1990). In *LaBonte v. Federal Mutual Ins. Co.*, *supra*, 159 Conn. 256, the court elaborated upon what may qualify as "independently

negligent behavior on the part of parents" by specifying instances "where they had entrusted a dangerous instrumentality to their children or had failed to restrain their children who they knew possessed dangerous tendencies."

A plaintiff must prove that a harm was foreseeable to a defendant in order to maintain a negligence cause of action. *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 385-86, 650 A.2d 153 (1994). This is because "[t]he ultimate test of the existence of a duty to use due care is found in the foreseeability that harm may result if it is not exercised . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable, but the test is, would the ordinary [person] in the defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?" *Id.*, 385. "Accordingly, the fact finder must consider [*17] whether the defendant knew, or should have known, that the situation at hand would obviously and naturally, even though not necessarily, expose [a plaintiff] to probable injury unless preventive measures were taken." (Internal quotation marks omitted.) *Mirjavadi v. Vakilzadeh*, 128 Conn.App. 61, 76, 18 A.3d 591 (2011) "Due care does not require that one guard against eventualities which at best are too remote to be reasonably foreseeable." *Noebel v. Housing Authority of New Haven*, 146 Conn. 197, 202, 148 A.2d 766 (1959).

⁵As an aside, the court notes that §52-572, by its plain language, refers only to minors who "wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle." (Emphasis added.) The counts against Christopher Sunbury in the operative complaints for the present action and the companion action sound in negligence, however, not intentional tort and/or recklessness. Furthermore, none of these counts contain any express or implied allegations that Christopher Sunbury "wilfully or maliciously" injured the plaintiff. Other trial courts have concluded that parental liability under §52-572 is not a legally cognizable cause of action when such liability is sought for a minor's negligence. See *Krepcio v. Ray*, Superior Court, judicial district of New London, Docket No. CV 08 5008383, 2011 Conn. Super. LEXIS 1273 (May 19, 2011, Martin, J.); *Santagata v. Woodbridge*, Superior Court, judicial district of New Haven, Docket No. CV 96 0384914, 1997 Conn. Super. LEXIS 3470 (December 26, 1997, Zoarski, J.). Nonetheless, the issue of the statute's applicability cannot be dispositive of the present motion, because it has not been raised by the defendants. "[A] court may not grant summary judgment sua sponte . . ." *Hope's Architectural Products, Inc. v. Fox Steel Co.*, 44 Conn.App. 759, 762 n.4, 692 A.2d 829, cert. denied, 241 Conn. 915, 696 A.2d 985 (1997). "The issue must first be raised by the motion of a party and supported by affidavits, documents or other forms of proof." (Internal quotation marks omitted.) *Miller v. Bourgoin*, 28 Conn.App. 491, 500, 613 A.2d 292, cert. denied, 223 Conn. 927, 614 A.2d 825 (1992). Therefore, the court grants the present motion on the counts sounding in parental liability under §52-572 only for the reasons stated *supra*.

The court in the present action has already determined from the evidence before it that the defendants were unaware that Christopher Sunbury possessed the samurai sword. It therefore may not determine that genuine issues of material fact exist regarding their alleged failure to limit, monitor and/or prevent his use of the sword. The nonmovants argue that the court must nonetheless deny the present motion on the negligence counts against the defendants because there are genuine issues of material fact about whether Christopher Sunbury's conduct was foreseeable to the defendants, regardless of whether they knew about the sword. The basis for the foreseeability claimed [*18] by the nonmovants is the fact that Margery Sunbury contacted local police and sought a warrant for Christopher Sunbury's arrest after he caused damage to their family residence. According to the nonmovants, Christopher Sunbury's conduct during the familial disagreement "is evidence that he had the propensity to cause harm to other individuals and their property."

The nonmovants' interpretation of foreseeability is too broad under the prevailing standard. Damage caused to a property by a violent response to a disagreement and injury caused to a person by the negligent use of a dangerous instrumentality are not harms of the same general nature. The possibility that the defendants' alleged failure to act in response to the former incident led to the decedent's injury during the latter incident is too remote for the court to conclude that the injury was reasonably foreseeable to the defendants. The fact that the defendants were wholly unaware of their son's whereabouts at and around the time of the August 7, 2008 incident further counsels against coming to this conclusion. Thus, the defendants have met their burden on summary judgment of establishing with evidence that no genuine issues [*19] of material fact exist about whether they were able to foresee the incident, such that

they owed a duty of care to the decedent, and they are entitled to a judgment as a matter of law because the nonmovants have not met their burden in turn. The court accordingly grants their motion on the counts against them in the operative complaints for the present action and the companion action that sound in negligence.

CONCLUSION

For the foregoing reasons, the court grants the entirety of the defendants' motion for summary judgment, on counts two through four of the complaint in the present action and counts ten through twelve of the complaint in the companion action.

BY THE COURT

Richard E. Burke, Judge

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