

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 : November 2, 2016

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT**

1. The Most Material Fact in the Case is in Issue as the Defendants Deny Their Minor Son Damaged the Plaintiff's Property

Summary judgment shall be rendered "if the pleadings, affidavits and any other proof submitted show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. "The courts are in entire agreement that the moving party for summary judgment 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." (Internal quotation marks omitted.) Zielinski v. Kotsoris, 279 Conn. 312, 318, 901 A.2d 1207 (2006).

On March 8, 2014, the Defendants' minor son, Owen Lovejoy, intentionally burned down the Plaintiff's residential dwelling located at 102 Simon's Pond Road in Colebrook, Connecticut, a crime to which he confessed to two Connecticut State Police Detectives and a Sergeant and while in the presence of his parents, Defendants Glen Lovejoy and Kathleen Riiska-Lovejoy. See Defendants' sworn Responses to Interrogatories and Requests for Production attached hereto as Exhibit A and Defendants' Responses to Requests for Production and Supplemental Responses attached hereto as Exhibit B and the Juvenile Arrest Warrant Application attached as Exhibit C therein. While the Defendants have moved this court for partial summary judgment, maintaining, as they must, that there is no issue of genuine fact, the Defendants deny that their son committed the arson in question, which is the most material fact at issue in this case.

Paragraph 4 of the Second Count of the Plaintiff's Complaint alleges the following:

On or about March 8, 2014, the Defendants' son, Owen Lovejoy, having a date of birth of August 20 1996 and then a minor, intentionally burned down the residential dwelling on the Plaintiff's property, said property being generally known as 102 Simons Pond Road, Colebrook, Connecticut (the "property").

In the Defendants' Answer, they responded to the allegations in Paragraph 4 as follows:

As to so much of this paragraph that alleges that the minor child "intentionally burned down the residential dwelling", denied. As to the remaining allegations in this paragraph, admitted.

In their Memorandum of Law in Support of Motion for Partial Summary Judgment (hereinafter the "Defendants' Memorandum"), at page 12, the Defendants summarize the Plaintiff's claim, in part, to be that Owen Lovejoy "*allegedly* set the subject fire" and at page 15 of their Memorandum, they argue that any "*alleged* conduct that caused Plaintiff's damages was unforeseeable to Defendants" (emphasis added).

From their pleadings, it is clear that the Defendants intend to maintain at trial that their son did not burn down the Plaintiff's property even though he admitted to the crime. That is their prerogative, of course, but putting in issue *the most material fact alleged in the Plaintiff's Complaint* dooms their motion for summary judgment as it is their burden to show the absence of *any* genuine issue of *all* the material facts alleged. "The purpose of pleadings is to apprise the court and opposing counsel of the issues to be tried, not to conceal basic

issues until after the close of evidence.” Biller v. Harris, 147 Conn. 351, 357, 161 A.2d 187, 190 (1960). The Defendants should not be able to apprise this Court and the Plaintiff that the trial is going to be about whether their son committed the arson or not while moving for summary judgment when that material issue is contested by the parties.

2. The Defendants’ claim that they had no ability to realistically restrain their son is belied by their discovery responses and their own actions.

In their Memorandum, at page 2, the Defendants claim that there is no genuine issue as to the material fact that they “had neither the ability nor the opportunity to realistically restrain their seventeen year-old son from setting fire to the structure in question.” The Defendants belittle the Plaintiff’s claim that they did have the ability to exercise control over their son arguing, at Page 20 of their Memorandum that: “Owen Lovejoy was not an infant that could be placed in a crib” and that the Plaintiff “ostensibly believes Defendants should have kept their son under lock and key”.

However, in discovery, the Defendants have conceded that they did, in fact, have the ability and the opportunity to realistically restrain their son from

his freedom to come and go in his daily activities. The Plaintiff interposed the following interrogatory to the Defendants and they responded as follows:

15. State whether your son was ever restrained by you from his freedom to come and go in his daily activities such as being grounded from leaving the family home and/or enrolled in a camp, school or other place where his ability to freely come and go in his daily activities was monitored and/or restricted. If yes, provide when such occurrence happened, the restrictions placed upon him and who placed the restrictions upon him.

RESPONSE: Not prior to the subject fire.

See Plaintiff's Interrogatories and Defendants' sworn responses thereto attached hereto as Exhibit A.

The Defendants concede that their ability and opportunity to realistically restrain their seventeen year-old son is a "material" fact in this case. Their own sworn interrogatory response, which indicates that they did have such ability and opportunity to so restrain their seventeen year-old son after the subject fire, has created a genuine issue over the material fact of their ability and opportunity to realistically restrain their son. A jury should decide whether circumstances were so dramatically different pre-fire than post-fire that the Defendant's claim of inability to restrain their son pre-fire is believable.

Also produced in discovery was a Juvenile Summons and Complaint/Promise to Appear issued by the Connecticut State Police at the time of Owen Lovejoy's arrest. The Juvenile Summons must be signed by the parent/guardian or person having "control" of Owen Lovejoy. The Defendant, Kathleen Riiska-Lovejoy signed as the person in "control" of Owen Lovejoy. See Exhibit B and a true and correct copy of the Juvenile Summons which is attached therein as Exhibit 2.

While claiming no ability to control her son in this case, the Defendant, Kathleen Riiska-Lovejoy, nonetheless signed the Juvenile Summons as the person "in control" of her son at the time of his arrest and she signed it in the presence of a State Police Detective and handed it back to him. Her assurance to the State Police Detective that she was in control of her son on the one hand and her claim that she had neither the ability nor the opportunity to realistically control her seventeen year-old son in response to this lawsuit on the other hand, has created a genuine issue of material fact which a jury should decide.

Demonstrating the Defendants' further ability to control their son is the fact that the Defendants committed him to the Institute of Living from August

25, 2013 through September 3, 2013 and to Natchaug Hospital from March 14, 2014 through March 26, 2014. True and correct copies of medical records demonstrating those committals are attached to Exhibit B hereto as Exhibit 3 therein. These medical records evidencing the Defendants' ability to literally restrain their son's comings and goings completely for nine (9) and twelve (12) day periods, too, have created a genuine issue of material fact on the issue of their ability and opportunity to realistically restrain their son.

The Defendants' credibility on this issue is also called into question given their response to Interrogatory No. 15, which specifically asked them whether they had ever restrained their son by enrolling him in a place where his ability to freely come and go in his daily activities was monitored and/or restricted. They responded "not prior to the subject fire" notwithstanding their committal of their son to the Institute of Living for nine days, prior to the fire, which is precisely the type of place where their son's ability to come and go in his daily activities was monitored and/or restricted.

3. The Defendants' argument that absent their prior knowledge that their son had a propensity to set fire to others' property shields them from liability is misplaced as a matter of their own cited case law.

Paragraph 8 of the Second Count of the Plaintiff's Complaint sounds as follows:

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.

In their Memorandum, the Defendants allege a theory that: (1) unless their son exhibited fire setting tendencies prior to "allegedly" burning down the Plaintiffs' residence; and (2) unless they knew about those tendencies prior to their son "allegedly" burning down the Plaintiff's residence; and (3) that unless the Plaintiff also knew about those tendencies prior to commencing suit, they cannot be held liable and are entitled to summary judgment. One of the unreported decisions relied upon by the Defendants in their Memorandum is Smith v. Sunbury, Judicial District of New Haven, Docket No. NNH-CV-106010501 (July 22, 2011, Burke, J.).

That decision, citing RK Constructors, Inc. v. Fusco Corp., 231 Conn. 381, 385-86, 650 A.2d 153 (1994), undermines the Defendants' argument that a known propensity to set fires is a prerequisite to the Plaintiff recovering for damages caused by the fire setting in this case. "The 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 the harm of a general nature of that suffered was likely to result?"

Defendant, Glen Lovejoy's Affidavit, which points out that he is a Medical Doctor in an attempt to bolster his credibility as a reviewer of medical records, states that he read all of his son's medical records and none contain any entries of fire-related conduct by his son prior to the fire at issue in this case and none of the records contain any entries regarding whether his son exhibited a propensity to engage in fire-related conduct. See paragraphs 13-14 of the Affidavit of Glen Lovejoy attached to the Defendants' Memorandum. But

as the Defendants' own cited case law establishes, the test is not whether the Defendants knew of their son's propensity to commit arson, rather, it is whether an ordinary person in the Defendants' position (i.e., parents to this minor), knowing what they knew or should have known about their son's mental conditions, prior conduct and warning signals leading up to the arson, should have anticipated the harm to the Plaintiff's property that was suffered in this case.

What Dr. Lovejoy didn't point out in his review of his son's considerable medical records is that when they committed their son to the Institute of Living in August of 2013, seven months prior to the arson, their son "presented with positive auditory hallucination and suicidal ideation to crash his car . . ." See true and correct copies of the medical records attached hereto at Exhibit B as Exhibit 3 therein). What Dr. Lovejoy didn't point out in his review of his son's considerable medical records is that in January of 2014, two months before the arson, Defendant Kathleen Riiska-Lovejoy reported to staff at the Charlotte Hungerford Hospital that her son's mood and behavior began to change and that he was involved in uncharacteristic incidents such as getting in a car accident with another driver and fleeing the scene, making racial and sexual

remarks at school, stealing candy from a teacher's desk but denying it, experiencing memory loss and no recalling simple directions. See true and correct copies of the medical records attached at Exhibit B as Exhibit 4 therein. Notwithstanding the Defendant, Kathleen Riiska-Lovejoy, a nurse by profession, having full knowledge of changes in her son's markedly changed behavior just before the arson, the first medical intervention she and her husband, Glen Lovejoy, a Medical Doctor as he, himself, points out, sought for their son was *after* the arson.

What Dr. Lovejoy also didn't point out in his review of his son's considerable medical records is that both he and his wife, the caretakers of their minor son, both suffered from depression at the time this was all going on and were on Wellbutrin themselves. See true and correct copies of the medical records attached to Exhibit B Exhibit 5 therein.

A jury might find that an ordinary and reasonably prudent parent (let along a Doctor or Nurse as the Defendants are) who learned of their son being involved in a hit and run car accident would have remembered that they committed their son to the Institute of Living just six months prior in part because he had suicidal ideations of *crashing his car*. A jury might believe that

an ordinary and reasonably prudent parent (let along a Doctor or Nurse as the Defendants are) with notice of their son crashing the family car and fleeing from the scene, stealing from a teacher and making racial and sexual remarks at school, might be in a dangerous downward spiral and that he needed help and needed to be restrained before he caused further harm to himself or others and that the Defendants had a duty to protect others from the actions of their so, the Plaintiff being one of those others they had a duty to look out for. Sadly, Owen himself knew of his need to be restrained as he stated, upon questioning by the State Police Detectives, that he “needed help and needed to go back to the ‘Institute of Living’”. See a true and correct copy of the arrest warrant attached to Exhibit B as Exhibit 1 therein.

A jury might believe that setting fire to the Plaintiff’s property next door, a short time after damaging another person’s vehicle by crashing the family car into it and stealing another person’s property, is harm of a general nature of that was likely to result absent reasonable restraint and control over Owen Lovejoy. See Smith v. Sunbury, Judicial District of New Haven, Docket No. NNH-CV-106010501 (July 22, 2011, Burke, J.), citing RK Constructors, Inc. v. Fusco Corp., 231 Conn. at 385-86, 650 A.2d 153 (1994). A jury might believe

that the Defendants' own depression might have compromised their ability to appropriately react to their son's deteriorating condition.

4. The factual record in this negligence claim does not support summary disposition.

Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner. Fogarty v. Rashaw, 193 Conn. 442, 446, 476 A2d 582 (1984). 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 A2d 810 (1995).

In this case, the Defendants' son had preexisting and serious mental health issues which the Defendants were very much aware of. The Defendants committed their son to the Institute of Living seven months before the arson because he had suicidal ideations of crashing the family car. Just a short time before the arson, their son hit and ran from crashing the family car into another person's vehicle. The risk of damage and injury to that other driver, by a minor with a history of ideation of crashing his family car, is extremely significant and created a duty to take reasonable steps to control Owen Lovejoy's behavior, with that duty being owed to others including the Plaintiff,

whose real property was next door to where Owen Lovejoy lived. Causing serious damage to other's property was something Owen was fully capable of and his parents knew or should have known that fact since he had just fled from hitting another person's vehicle.

A reasonably prudent parent would have remembered their child's suicidal ideation of crashing the family car and would have gone into crisis mode for the safety of their child and other parties whom he might cause harm or damage to such as the Plaintiff. A juror might think that the hit and run crash would have been enough of a reason for the Defendants to take affirmative action to ensure their son didn't cause harm or damage to anyone else. A reasonable juror might well ask: "what more were they waiting for to happen?" Certainly, the Defendants had institutionalized their son before so they knew how to restrain his comings and goings and how to get him help. Instead, these Defendants ignored their son's behavior, which was escalating just before the fire, until the State Police arrested their son. Only then, did they exercise their ability to commit him to another mental health facility too late, of course, to stop the property loss the Plaintiff suffered.

These Defendants admit that they had the ability to restrain their son's freedom to come and go from his daily activities after the fire. They provide no basis of why they couldn't have done so before the fire other than mocking the Plaintiff's claim of negligent supervision by pointing out that their son was not an infant who could be put in a crib. A jury should hear why the Defendants believe they could not sufficiently restrain their son before the fire because, as they say, he wasn't a baby who could be put in his crib. Respectfully, a jury should decide whether to credit their testimony or not and their Motion for Summary Judgment should be denied.

Dated at Simsbury, Connecticut this 2nd day of November 2016.

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

/S/

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CERTIFICATION OF SERVICE

I hereby certify a copy of the foregoing, together with the exhibits thereto, was sent via email to all counsel of record this 2nd day of November 2016 as follows:

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