[J-116-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF ROBYN JORJEAN WILLIAMS, DECEASED; GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF JEROME I. CAMPBELL, DECEASED; GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF ALPHONSO CRAWFORD, DECEASED; NEIL CURTIS WILLIAMS, A MINOR BY HIS GUARDIAN AND NEXT FRIEND, GWENDOLYN PHILLIPS,	:	No. 90 WAP 2001 Appeal from the Order of the Superior Court entered April 10, 2001, at No1924WDA1999, affirming in part and reversing in part the Order of the Court of Common Pleas of Mercer County, Civil Division, dated November 30, 1998, at No1995-4217. 773 A.2d 802 (Pa. Super. Ct. 2001) ARGUED: September 9, 2002
v.	:	
CRICKET LIGHTERS; SWEDISH MATCH, S.A.; PINKERTON TOBACCO COMPANY; PINKERTON GROUP, INC.; PINKERTON GROUP, INC., T/A/D/B/A CRICKET USA; CRICKET, S.A.; POPPELL, B.V.; WILKINSON SWORD/CRICKET, INC.; WILKINSON SWORD, INC.; NDC CORPORATION AND NATIONAL DEVELOPMENT CORPORATION T/A SHENANGO PARK ASSOCIATES; NDC ASSET MANAGEMENT, INC.; REGIONAL SALES, INC.; UNIVERSAL MATCH COMPANY A/K/A UNIVERSAL MATCH CORPORATION; SWEDISH MATCH, A.B.; CRICKET, B.V; INTER-MATCH, S.A.; FEUDOR, S.A.; SCHICK NETHERLAND, B.V.; WARNER-LAMBERT HOLLAND, B.V.	:	

APPEAL OF: SWEDISH MATCH, S.A.; PINKERTON TOBACCO COMPANY; PINKERTON GROUP, INC.; PINKERTON

GROUP, INC. T/A/D/B/A CRICKET, USA; :
CRICKET, S.A.; POPPELL, B.V.; :
WILKINSON SWORD/CRICKET, INC.; :
WILKINSON SWORD, INC.; UNIVERSAL :
MATCH COMPANY A/K/A UNIVERSAL :
MATCH CORPORATION; SWEDISH :
MATCH, A.B.; CRICKET, B.V.; INTER- :
MATCH, S.A.; AND FEUDOR, S.A. :

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE NEWMAN DECIDED: DECEMBER 3, 2003

As the majority opinion observes, the facts of this case are tragic. A family was decimated when two-year-old Jerome Campbell ignited bed linens with a Cricket lighter he had found in his mother's (Robyn Williams) pocketbook, which she had placed on top of a refrigerator. Neil, the five-year-old brother of Jerome, saw him use the lighter and tried several times to awaken their mother. He could not do so. A neighbor rescued Neil; but Jerome, Robyn, and another one of her children died in the ensuing blaze.

Gwendolyn Phillips, as administratrix of the estates, and as guardian of Neil ("Appellee"), sued the manufacturers and distributors of the Cricket lighter ("Appellants") and demanded that they pay damages to compensate Appellee for pain and suffering and loss of life. Appellee asserts that the doctrines of strict product liability and negligence provide a basis for recovery against Appellants for failing to have child-safety devices on the lighters.

One cannot help but feel compassion for this family. Compassion, however, can be a blind guide. The majority correctly ruled that concepts of negligence have no place in a strict products liability case and held that the Appellee's strict liability claim must fail because the lighter was not unreasonably dangerous when used by adults, the class of intended users. As one court explained:

> Cigarette lighters are intended to be used to set fire to things that are intended to be burned: cigarettes, cigars, candles, etc. They are not intended to be used as children's playthings. Indeed, the packaging of [the lighter at issue in that case] . . . bears the warning: "Keep out of reach of children." Since use of a lighter as a children's plaything was not its intended use, the manufacturer is not strictly liable for injuries incurred when it is so used, even if such use was reasonably foreseeable by [the manufacturer].

Jennings v. BIC Corp., 181 F.3d 1250, 1256 (11th Cir. 1999). Accordingly, the majority properly rejected the strict liability claims in this case because the lighter was safe for its intended use by adults.

However, I respectfully disagree with the majority because I do not believe that we should allow the negligence causes of action to remain. Instead, this Court should have reinstated the Order of the trial court granting summary judgment to Appellants on Appellee's causes of action sounding in negligence. Fundamentally, I base this conclusion on my belief that the law of negligence simply does not require Appellants to pay damages for placing into the stream of commerce an object that was reasonably safe for its intended use and, in fact, operated as intended.

Though I agree with the majority that Appellants had a duty to the mother, they fulfilled that duty by creating a lighter that was reasonably safe for its intended use. Appellants had a duty to manufacture a lighter that did not explode, leak fluid, or get unreasonably hot. They could not escape liability if their negligence caused the lighter to spontaneously spark or ignite when left unattended. However, the law of negligence does not establish a duty to make the lighter safe for the use of a two-year-old child. Similarly absent are any applicable statutory requirements that the lighter at issue bear a child-safety device. Although the United States Consumer Product Safety Commission promulgated regulations requiring that lighters subject to the provision "be resistant to successful operation by at least 85 percent" of the children tested, 16 C.F.R. § 1210.3, the lighter involved in the instant fire was manufactured before the July 12, 1994 effective date of the regulations, 16 C.F.R. § 1210.1.[1] Consequently, there are no regulations that create a duty to make the lighter safe for the use of the child in this case.

We do not require knife manufacturers to make knives safe for our children. We do not require the makers of matches to place them in special safety-boxes; we do not require drill makers or electric saw makers to have child safety locks; and we should not require lighters to be made safe for children.

> Were we to hold otherwise, the principle that we would have to adopt would permit virtually every manufacturer of a household tool or appliance to be found negligent. Knives, guns,

[1] According to the Superior Court, the lighter was manufactured in 1990, four years before the effective date of the regulation. Phillips v. Cricket Lighters, 773 A.2d 802, 807 (Pa. Super. 2001).

> blenders, saws, drills: the list of helpful tools perfectly safe in adult hands but dangerous in the hands of unsupervised children is endless.

Kirk v. Hanes Corp. of N.C., 16 F.3d 705, 710 (6th Cir. 1994) (quoting Byler v. Scripto-Tokai Corp., 1991 U.S. App. Lexis 22277 at *17 (6th Cir. 1991) (unpublished)).

As parents, we recognize that we cannot safeguard our children from all the dangers of the world. We take reasonable action to protect them, but when those actions fail, we cannot blame others for our own lack of attention or for the dangers of the world in general. Lighters are potentially dangerous products. They are not to be used by children.

Manufacturers, distributors, and sellers have a duty to provide products that are not unreasonably dangerous when operated as intended by their intended users. They also have the duty to warn us of the dangers inherent in the proper operation of the product and to tell us, what we all know, that certain products should be kept away from children. They do not have a duty to make sure that a reasonably safe product, when used as intended, be safe when used by a two-year-old child. That is an unreasonable burden, which I would decline to impose on industry.

I am sympathetic to efforts to encourage lighter manufacturers to place child safety devices on lighters. However, neither the law of negligence, nor any applicable regulatory or statutory provision required Appellants to do so.

Therefore, I respectfully dissent. I would reverse the determination of the Superior Court and reaffirm the Order of the trial court granting Appellants' motion for summary judgment and dismissing the claims of Appellee.[2]

[2] As to the punitive damages claim, because I believe that Appellants did not breach a duty to the mother or the children, there is no conceivable wanton behavior or willful misconduct to form the basis of a punitive damages claim. Accordingly, I would dismiss it as well.