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WESTERN DISTRICT OF WASHINGTON AT TACOMA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEN L. JARAMILLO, et al

Plaintiffs,

v

FORD MOTOR COMPANY, a Delaware
Corporation, and DOREL JUVENILE
GROUP, INC, a foreign corporation,

Defendants

Case No. C01-5311

ORDER GRANTING DEFENDANT
DOREL'S MOTION FOR SUMMARY
JUDGMENT

THIS MATTER comes before the court on Defendant Dorel's Motion for Summary Judgment. The court has reviewed all materials submitted in support of and in response to said motion, as well as the files and records herein.

This action was commenced June 12, 2001, against Ford Motor Company, manufacturer of a Ford Explorer involved in an automobile accident occurring October 5, 2000, in Idaho. It appears the vehicle rolled over after swerving to avoid deer in the roadway. The vehicle was driven by Angela Jaramillo. Her husband, Ken, was a front seat passenger. Their three children, Riley, age 3, McKenna, age 4, and Sawyer, age 2, were riding in the backseat. Angela Jaramillo and McKenna died in the accident. On January 10, 2002, defendant Dorel was added as a defendant. Dorel manufactured the Cosco Grand Explorer booster seat in which McKenna was seated at the time of the accident.

Dorel moves for summary judgment alleging (1) an absence of evidence to support plaintiffs' case against Dorel, and (2) no showing of proximate cause.

1 Plaintiffs do not oppose Dorel's motion for summary Judgment Ford contends that there are issues
2 of fact precluding summary judgment on the issue of design defect, but agree that Dorel is entitled to summary
3 judgment on the grounds that the product was not used in accordance with safety warnings and instructions,
4 and because plaintiffs do not oppose the motion

5 It is Ford's position that material issues of fact exist regarding the design defect in the Dorel product
6 which they should be allowed to present to the jury by way of an affirmative defense in Dorel's absence Ford
7 seems to acknowledge that their theory is not premised on any evidence of defect other than the fact or
8 circumstances of the occurrence In support of this position Ford relies on *Pagnotta v Beall Trailers*, 99 Wn
9 App 28 (2000), *Bombardi v Pochel's Appliance & TV Co* 10 Wn App 243 (1973), and *Potter v Van*
10 *Waters & Rogers*, 19 Wn App 746 (1978)

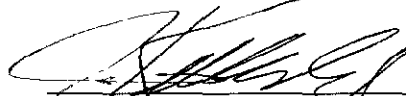
11 A review of *Pagnotta* indicates evidence from an experienced investigating officer and a private
12 investigator which supported the plaintiff's theory of defective design There is no analagous evidence in this
13 case In *Bombardi* three expert witnesses testified that a television set was the cause of the fire, although they
14 were unable to state specifically how the set was defective because it was destroyed in the fire In this case
15 we have no such expert testimony In *Potter* plaintiff alleged defective rope caused his fall and consequent
16 injuries The court found the following circumstantial evidence (1) the rope was new and had not been
17 removed from its carton until the day before the accident, (2) the particular carton did not contain warnings
18 that the rope inside was not of the same quality as ordinary 3/8-inch 3-strand manila rope, (3) the employee
19 in charge of cutting the rope from the carton into 60-foot lengths tested some of the segments, which resulted
20 in several of the segments breaking in his hand with the application of slight force, (4) the particular segment
21 involved was used on only one trip prior to its use by the plaintiff, (5) at the time the plaintiff used the rope
22 it "appeared to be new and in good condition", (6) the plaintiff was injured when the rope broke, (7) the rope
23 broke while being subjected to limited force and while being used in a normal fashion, (8) the break occurred
24 in a straight section, not near any sharp object, knot, bend or kink, (9) the plaintiff later obtained and tested
25 a 30-foot-long piece of 3/8-inch manila rope from the same coil of rope as the coil from which the rope in
26 question was taken, resulting in a similar break although the rope still appeared new, was not discolored,
27 contained nothing irregular, and was still coiled as when taken from the carton, (10) a 3/8-inch manila rope
28 would not break under a steady gradual pull by a 200-pound man unless it was jerked or yanked or was

1 brought into contact with a sharp object, and a 3/8-inch manila rope that did break under such a steady pull
2 would be defective at the point of the break. No analogous circumstantial evidence of a defect has been
3 presented to the court in this case.

4 No material issue of fact exists to support a claim of design defect, or proximate cause.

5 **Accordingly the court finds as a matter of law that no material issue of fact exists with regard**
6 **to the liability of defendant Dorel. Dorel's Motion for Summary Judgment is granted.**

7
8 December 6, 2003

9 
10 J. Kelley Arnold, U.S. Magistrate Judge