

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28576
W/prt

_____AD3d_____

Submitted - September 10, 2010

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-04758

DECISION & ORDER

Christopher Lafia, etc., et al., plaintiffs, v Baldwin Summer Program Association, Inc., defendant, Kid's Party Source, Inc., doing business as 100% Fun, defendant third-party plaintiff-appellant; Anthony Lafia, third-party defendant-respondent.

(Index No. 708/07)

Gold, Stewart, Kravatz, Benes & Stone, LLP, Westbury, N.Y. (James F. Stewart of counsel), for defendant third-party plaintiff-appellant.

In an action to recover damages for personal injuries, etc., the defendant third-party plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Spinola, J.), entered March 30, 2009, as, upon reargument, in effect, vacated its prior determination in an amended order of the same court dated January 28, 2009, denying the third-party defendant's motion for summary judgment dismissing the third-party complaint, and thereupon granted the motion for summary judgment.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The third-party defendant, the father of the infant plaintiff (hereinafter the father), established his prima facie entitlement to judgment as a matter of law dismissing the third-party complaint by demonstrating that the acts complained of did not implicate a duty he owed to the world at large. Rather, those acts only gave rise to an allegation that the father negligently supervised the

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infant plaintiff, which cannot serve as the basis for a cognizable claim for contribution (*see Rios v Smith*, 95 NY2d 647, 651; *LaTorre v Genesee Mgt.*, 90 NY2d 576, 579; *Holodook v Spencer*, 36 NY2d 35, 50-51; *Thurel v Varghese*, 207 AD2d 220, 223). In opposition, the defendant third-party plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The contention of the defendant third-party plaintiff that the father failed to provide proper medical care to the infant plaintiff after the incident is asserted for the first time on appeal and, therefore, is not properly before this Court (*see generally Betz v Daniel Conti, Inc.*, 69 AD3d 545; *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573).

MASTRO, J.P., DICKERSON, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court