Martinez v KAZ USA, Inc.
2020 NY Slip Op 30438(U)
January 31, 2019
Supreme Court, Kings County
Docket Number: 11203/14
Judge: David B. Vaughan

At an IAS Term, Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 31st day of January, 2019.

PRESENT:

HON. DAVID B. VAUGHAN,
Justice.

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VICTOR MARTINEZ, as father and natural guardian of S. H. M.,[1] an Infant,

Plaintiff,

- against -

KAZ USA, INCORPORATED,
HELEN OF TROY, LIMITED, and
BED, BATH & BEYOND, INCORPORATED,

Defendants.

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KAZ USA, INCORPORATED,
HELEN OF TROY, LIMITED, and
BED, BATH & BEYOND, INCORPORATED,

Third-Party Plaintiffs,

- against -

MICHELLE MARTINEZ, individually and as mother and natural guardian of S. H. M.,
and VICTOR MARTINEZ, as father and natural guardian of S. H. M.,

Third-Party Defendants.

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DECISION AND ORDER

Index No. 11203/14

Mot. Seq. No. 8-9

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KINGS COUNTY CLERK
FILED
2019 FEB 11 AM 10:07

The following papers numbered 1-8 read herein:

	Papers Numbered:
Notice of Motion, Affirmation (Affidavit) and Memorandum of Law Annexed	1, 2-3, 4; 5-6
Affirmation in Opposition	7
Affirmation in Reply	8

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[1] The full name of the infant plaintiff has been redacted in compliance with 22 NYCRR 202.5 (e) (1) (iii).

In this action to recover damages for personal injuries and the related third-party action, the plaintiff/third-party defendant Victor Martinez (Victor) and the third-party defendant Michelle Martinez (Michelle), individually and as parents and natural guardians of their infant daughter S.H.M. (the infant plaintiff), move for summary judgment dismissing the third-party action.

On a Saturday morning in March 2014, the infant plaintiff, then ten months old, was burned by hot water from a "WarmMist" humidifier (the humidifier) manufactured, distributed, and sold by the defendants/third-party plaintiffs Kaz USA, Incorporated, Helen of Troy, Limited, and Bed, Bath & Beyond, Incorporated, respectively (collectively, the defendants). Earlier that morning, the infant plaintiff's father, Victor, had placed the humidifier on the living room floor before he and his son (the infant plaintiff's older brother) departed from the residence. Michelle, the infant plaintiff's mother, was left in charge of her supervision. Shortly before the incident, Michelle had observed the infant plaintiff crawling on the living room floor near the humidifier and touching it. She further observed the infant plaintiff toppling it over, causing a severe burn to the infant plaintiff's right ankle.

General Obligations Law § 3-111 provides that "[i]n an action brought by an infant to recover damages for personal injury the contributory negligence of the infant's parent or other custodian shall not be imputed to the infant." Section 3-111 codifies the general rule that a mere negligent supervision of a child is not actionable (*see e.g. Siragusa v Conair Corp.*, 153 AD3d 1376, 1377 [2d Dept 2017]). Yet, [p]recluding a parent's negligence from being imputed to his or her child does not . . . expand the scope of a defendant's duty to the child" (*Vaughan v Saint Francis Hosp.*, 29 AD3d 1133, 1136 [3d Dept 2006]). "The analysis regarding the initial question of whether negligence . . . occurred remains unaltered by

General Obligations Law § 3-111 in that the fundamental elements – *i.e.*, a breach of duty that is a proximate cause of injuries – must be shown. What a defendant cannot do (if found to have breached a duty that was a proximate cause of a child's injuries) is attempt to use a parent's negligence to reduce the child's damages" (*Vaughan*, 29 AD3d at 1136 [internal citations omitted]). The New York Pattern Jury Instructions provide specific guidance on this point, stating:

> "If you find that plaintiff is entitled to recover under the rules of law I have given you, *the sum you award as damages should not be reduced*, even if you also find that there was negligence on the part of plaintiff's (. . . parent . . .) which contributed to plaintiff's injury."

(PJI 2:262 [2018] [emphasis added]).

For example, the Court of Appeals held in the context of premises liability that parental acts or omissions constituted *an intervening cause* absolving others from negligence (*see Martinez v Lazaroff*, 48 NY2d 819, 820 [1979] [the failure of defendants, the owners and managers of apartment building in which plaintiffs were tenants, to supply plaintiffs with hot water due to the boiler's disrepair was not the proximate cause of the injuries suffered by the infant plaintiff who was injured when his father was transporting a pot of boiling water from the substitute source and the infant plaintiff came out of the bedroom and bumped into him; summary judgment was properly granted to defendants]; *Rivera v City of New York*, 11 NY2d 856, 857 [1962] [defective plumbing causing bathtub always to be filled to height of the overflow was not the proximate cause of injury sustained by an infant who was severely burned when he fell into the tub when he was standing on its edge trying to reach the light; denial of summary judgment to the landlord reversed]; *see generally Leasure v*

1221-1225 Realty, LLC, 25 Misc 3d 1226(A), 2009 NY Slip Op 52303(U) (Sup Ct, Kings County, Miller, J.) (collecting authorities).

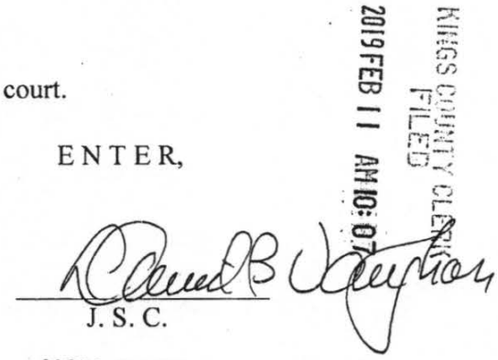
As can be concluded from the foregoing, the parents' motions to dismiss the third-party complaint must be denied because there is an issue of fact as to whether the parents' alleged negligence (either severally or jointly), as more fully set forth in the margin,[2] constituted *an intervening cause* of the defendants' alleged negligence in the manufacture, distribution, and sale of the humidifier. One caveat is appropriate. The court in no way intends to trench upon the statute which prohibits reduction of an award of a child's damages by the fault of his or her parents. Should the infant plaintiff prevail and obtain an award of damages at trial, such award may not be reduced on account of her parents' alleged fault.

Based on the foregoing and after oral argument, it is

ORDERED that Victor's motion in Seq. No. 8 and Michelle's motion in Seq. No. 9 are *each denied.* The defendants' counsel is directed to serve a copy of this decision and order with notice of entry on the parents' respective counsel and to file an affidavit of said service with the Kings County Clerk.

This constitutes the decision and order of the court.

ENTER,



J. S. C.

HON. DAVID B. VAUGHAN
J.S.C.

[2] This is the combination of (1) Victor's alleged negligence in creating a dangerous condition in the living room following his and his son's departure from the residence; namely, placing a filled humidifier within his daughter's reach, even though his son (rather than his daughter) needed the use of a humidifier; and (2) Michelle's alleged negligence in failing to supervise her daughter and stop her from touching and toppling the humidifier as the latter was crawling in its vicinity.