IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ESTATE OF THE LATE DAYTONA
BREWSTER, LORI A. BARTRAM,
JASON A. BREWSTER and
MONICA BARTRAM,

OPINION AND ORDER

Plaintiff,

05-C-0005-C

v.

DOREL JUVENILE GROUPS, INC.,

Defendant.

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Plaintiffs Estate of the Late Daytona Brewster, Lori A. Bartram, Jason A. Brewster and Monica Bartram have moved for a new trial pursuant to Fed. R. Civ. P. 59(a). Plaintiffs sued defendant for damages they incurred when the infant son of Jason Brewster and Lori Bartram died in a car safety seat manufactured by defendant. Plaintiffs contended that the safety seat was defective because it had a tendency to "false latch," that is, the tongue of the mechanism that secured the safety harness around the child could be inserted into the latch plate without engaging fully but sufficiently to prevent it from slipping out immediately. Plaintiffs alleged that Daytona had been placed properly into the car seat, that Jason

Brewster had inserted the tongue of the latch into the latch plate, thinking it was engaged fully, and that the latch had disengaged later, allowing the safety straps to slide up to create a noose that killed Daytona when he was alone in the car.

Plaintiffs contend that errors committed by the court during trial deprived them of substantial justice. I am not persuaded that the matters complained of by plaintiffs were errors or, if they were, that they prevented plaintiffs from receiving a fair trial.

1. Precluding plaintiffs from introducing evidence of other complaints of false latching

Plaintiffs' primary concern is the issue of consumer complaints about false latching. They allege that they were denied a fair chance to discover the complaints that defendant had received. At the outset, they have revived their objections to the court's rulings on the discovery disputes that were the subject of a number of hearings and orders. Indeed, trial of the case was continued for two months to allow plaintiffs time to try to obtain the additional discovery they believed was necessary. On top of the time they had received up to this time, the continuance gave them ample opportunity to obtain evidence of alleged "false latchings" that occurred under circumstances sufficiently similar to Daytona Brewster's to be relevant to this case. They cannot attribute their failure to uncover such evidence as the result of the rulings of this court or to defendant's recalcitrance in producing evidence.

Despite their extended discovery time, plaintiffs never produced evidence of false

latchings in similar circumstances. Daytona Brewster died in a parked car; his circumstances were not at all similar to an alleged false latching in a crash situation. Plaintiffs argue correctly that admission of dissimilar situations should be allowed when useful comparison can be made, but they have not shown that what can happen to a latching mechanism in an accident will yield useful information about what can happen to such a mechanism in a parked car.

A separate reason for not allowing the evidence of the other incidents is that each rests upon the credibility of the person who claims to have latched the safety seat before the accident. The need for independent determinations of such a critical issue makes this case markedly different from those cited by plaintiffs. The first of these cases involved an allegedly defective fuel cap, Rimer v. Rockwell Int'l Corp., 641 F.2d 450 (6th Cir. 1981), and the second involved defective pins connecting two parts of a mast. Ramos v. Liberty Mutual Ins. Co. 615 F.2d 334 (5th Cir. 1980). In these cases, it made sense for the court to admit the evidence of dissimilar accidents arising out of a similar defect. In this case, it does not.

2. Allowing defendant to state that it had never received another complaint of false latching

Plaintiffs challenge the court's failure to strike the statement in defendant's counsel's closing argument that defendant had sold 4,000,000 car safety seats without any other

complaint of a false latching. Plaintiffs say that this statement is untrue because defendant had received six to eight complaints about false latching occurring in crash situations. Technically, defendant's statement was not accurate. It had received six to eight complaints about an alleged false latching. However, plaintiffs had no evidence that any of these complaints were substantiated. Given the lack of evidence that defendant had ever received a provable instance of false latching in any situation, it was not unreasonable for defendant's counsel to make the statement he did. Moreover, it cannot be said to have prejudiced plaintiffs, given the plethora of evidence that undercut their false latching theory.

This evidence included testimony of defendant's expert and employee about the mandatory, regular federal testing of the car seat in question, the evidence that tended to show the strong possibility that Jason Brewster might have had difficulty putting the tongue into the latch plate from his position in the front seat, having to reach across his own seat to the opposite side of the back seat where the safety seat was installed, and the largely unpersuasive testimony of plaintiffs' expert on the false latch theory. Plaintiffs' theory rested on the unlikely possibility that Jason Brewster would have inserted the tongue into the latch mechanism far enough so that it would stay connected and appear latched during the entire trip from Lori Bartram's place of employment to their home but would then come unlatched after the car was parked and Daytona was alone in the car.

Plaintiffs' case depended on showing that Jason had latched the car seat harness in

a manner that reasonably led him to believe that it was latched securely. Sadly enough, however, the evidence did not support such a finding. To the contrary, it showed that Jason and Lori were lackadaisical about safety issues and maintenance of their property. Defendant adduced many examples, starting with the container of motor oil that was on the floor of the back seat of the car at the time of Daytona's death, within easy reach of Lori Bartram's four-year-old daughter, Monica. Shortly before Daytona's death, an animal control officer had been called to Jason's and Lori's house because their dog had bitten a neighbor after escaping from its pen. Jason told the officer that he thought the pen was locked. The officer found the dog pen so filthy that he directed Jason to clean it immediately. In trying to do so, Jason started to lift an engine block without help and dropped it on his finger. The family had no ice cube trays so they had to run to the Burger King for ice for the finger. While waiting for Jason to clean the pen and return to the car, Lori Bartram took Monica into the house to use the bathroom, leaving Daytona sleeping in his safety seat and unattended on a warm summer day. Less than a year after Daytona died, Lori was hit by another car. At the time, Monica was riding with her mother in the front seat of the car and was not wearing a seat belt.

A second possibility exists, if one believes that despite Jason's general lack of regard for safety, he had good reason for thinking he had latched the harness mechanism when he placed Daytona in the car safety seat. Monica Bartram might have pressed the release

button while she was sitting next to Daytona in the back seat. In short, it is possible that false latching occurred, but it is at least as possible that Jason failed to latch Daytona's harness or that Monica hit the release button. With one conclusion as likely as another, the jury could not find that plaintiffs had met their burden of proof. Plaintiffs did not show that it was more probable than not that false latching occurred, let alone that it was responsible for Daytona's death.

3. Court's misunderstanding of relevant regulatory scheme

Plaintiffs contend that it was error for the court to allow the jury to determine whether and how Federal Motor Vehicle Safety Standard 209 applied to the "metal to plastic" latch mechanism used in Daytona's car seat. It is true, as plaintiffs point out, that standard 209 is directed to "metal to metal" latches. However, defendant's employee testified that the federal testers of car seats apply Standard 209 to "metal to plastic" latches in the absence of a separate standard for metal to plastic latches. Plaintiffs introduced no contradictory evidence. Under these circumstances, it was not error to allow the jury to consider defendant's evidence.

4. Allowing defendant to prove compliance with allegedly irrelevant safety standards

It was not error to allow defendant to prove compliance with various safety standards.

Plaintiffs' expert had proposed certain changes in the latching mechanism of defendant's car seat. Defendant was entitled to try to show that plaintiffs' expert had not performed the testing necessary to establish that his proposed changes in the car seat would comply with federal safety standards.

5. Barring plaintiffs from arguing negligence

Plaintiffs did not plead negligence in their complaint against defendant and did not put in any proof of negligence at trial. (Plaintiffs say that they did but point only to the questions they put to defendant's employee on cross-examination. As defendant points out, a lawyer's questions are not evidence.) Plaintiffs contend that they were entitled to a verdict question on negligence because the court included a negligence question in the form of verdict distributed to counsel at the final pretrial conference. As I explained to counsel, the verdict form was intended to be the subject of further discussion, with its its final form depending on the evidence that came in at trial. Including a question in the tentative form of verdict did not constitute a ruling that such a question would be part of the final verdict.

As to plaintiffs' complaints that the court refused to instruct the jury on the negligence concepts of "camouflage" and "failure to warn," there is little to say. Essentially, plaintiffs are rearguing the defective condition of defendant's car seat by saying that it was manufactured in such a way that Lori Bartram could not see that the latch was fully engaged

and that the lack of a warning of incomplete engagement made the seat unreasonably dangerous.

6. Allowing jury to have car seats in jury room

Plaintiffs introduced into evidence eight of the ten car seats that went back to the jury. The parties discussed the car seats and their harnessing and latching mechanisms at length during the trial. After all of the attention that had been focused on the seats, it was appropriate to allow the jury to examine them during their deliberations. Plaintiffs objected to doing so, but I am not persuaded that it was error to overrule their objection.

7. Testimony of Anita Garrison

Anita Garrison was working at the Burger King across the street from the house in which Jason Brewster and Lori Bartram lived. When Brewster and Bartram discovered their son's body, she came onto the scene and tried to help. When she was called as a witness at trial, she testified that she had had considerable experience with children, having run a daycare facility at one time, and that in all her experience, she had never felt a baby as hot as Daytona was when she tried to help him.

Plaintiffs contend that allowing Garrison's testimony was a violation of the court's order. Before trial, I ruled that defendant could not introduce evidence that the Beloit Police

Department had investigated Daytona's death to try to determine whether he died of heat stroke after being left inside a closed car on a warm day. Garrison said nothing about any police investigation; she merely testified to her perception of Daytona's skin temperature. Contrary to plaintiffs' assertion, her testimony did not "introduce[] the police investigation previously ruled inadmissible." Plt.s' Notice of Motion, dkt. #87, at 11. Defendant did not violate the court's ruling because it never implied that Daytona's parents had been investigated for anything. Moreover, Garrison's testimony was relevant. The pathologist who had performed the autopsy testified that he believed that Daytona died from strangulation but would be willing to reconsider his conclusion if he had had evidence before him that the baby felt hot. Defendant was entitled to put in such evidence to defend against plaintiffs' contention that it manufactured a defective product.

In summary, I conclude that plaintiffs have failed to show that the court committed any errors that deprived them of their right to a fair trial.

ORDER

IT IS ORDERED that the motion for a new trial filed by plaintiffs Estate of the Late

Daytona Brewster, Lori A. Bartram, Jason A. Brewster and Monica Bartram is DENIED.

Entered this 21st day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge