

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-09-192

FILED - YORK COUNTY - 09/21/09

MARK C. SANBORN and
AMY E. SANBORN,

Plaintiffs

v.

ORDER

CALEB STEVENS and
CATHY NADEAU,

Defendants

The plaintiffs are the owners of a four-unit apartment building that was destroyed by a March 17, 2009 fire, which started in the apartment leased and occupied by the defendants and their family. The plaintiffs have brought a two-count complaint, based on negligence and breach of lease, against Mr. Stevens and Ms. Nadeau. Ms. Nadeau, who is separately represented by counsel, has filed a motion for summary judgment on the negligence claim, which is contained in Count I. The motion has been briefed. Oral argument is not necessary given the clarity of the written arguments.

There is no evidence that either Mr. Stevens or Ms. Nadeau started the fire. There is evidence to suggest that the fire may have been caused by the carelessness of Ms. Nadeau's then seven-year-old son.

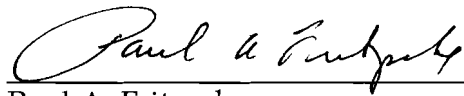
Maine has adopted the principles set forth in the Restatement (Second) of Torts §316. See *Merchant v. Mansir*, 572 A.2d 493 (Me. 1990) involving an injury caused by a bicycle with defective brakes. These principles were affirmed in the equally succinct opinion of *Bedard v. Bateman*, 665 A.2d 214 (Me. 1995) involving a jet ski accident.

There is no evidence to suggest that Ms. Nadeau's child had a propensity to play with matches nor is there evidence that Ms. Nadeau knew or should have known of the necessity and opportunity for exercising control over her son. See Restatement (Second) of Torts §316.

The entry is:

Judgment for only the defendant Cathy Nadeau on only Count I of the complaint.

Dated: October 22, 2010



Paul A. Fritzsche
Justice, Superior Court

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