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ROLAND TODD WHITE *v*. MAZDA MOTOR OF AMERICA, INC., ET AL.
(AC 33757)

DiPentima, C. J., and Bear and West, Js.

Argued April 17—officially released November 6, 2012

(Appeal from Superior Court, judicial district of Hartford, Robaina, J.)

Frank J. McCoy, *Jr*., with whom, on the brief, was *Alexander J. Sarris*, for the appellant (plaintiff).

Paul D. Williams, with whom was *James E. Hennessey*, for the appellees (defendants).

BEAR, J. The plaintiff, Roland Todd White, appeals from the summary judgment rendered by the trial court in favor of the defendants, Mazda Motor of America, Inc. (Mazda), and Cartwright Auto, LLC (dealership), in this product liability action stemming from a fire in his 2007 Mazda3 automobile (vehicle), which allegedly caused injury to the plaintiff. On appeal, the plaintiff claims that the court erred in concluding that his case should not proceed to a trial on the merits because he had failed to present sufficient evidence in opposition to the defendants' motion for summary judgment. We affirm the judgment of the trial court.

The record reveals the following. The plaintiff filed a two count amended complaint against the defendants seeking damages under the Connecticut Product Liability Act, General Statutes § 52-572m[1] et seq. (act), alleging that the vehicle was "defective and unreasonably dangerous." The plaintiff alleged in his complaint that on October 16, 2006, he purchased the vehicle from the dealership.[2] The plaintiff utilized the vehicle "for the purpose for which it had been designed, produced, manufactured, tested and sold; and [it] was used in a manner intended and foreseeable to [the defendants]." On November 15, 2006, approximately one month after the plaintiff had purchased the vehicle, he "lifted up the hood of the [vehicle] and flames erupted from [it], causing the [p]laintiff to sustain [injuries]."

On the basis of these alleged facts, the plaintiff claimed that the vehicle was defective and unreasonably dangerous in the following ways: (1) the fuel lines on the fuel rail of the vehicle were pressed onto the fitting at the fuel rail in such a way that a fuel leak occurred and caused a fire; (2) the fuel lines were installed or secured with clamps improperly, which caused damage to the lines, resulting in a fuel leak and a fire; (3) the defendants negligently installed the fuel lines on the vehicle in an incorrect manner, causing a fuel leak and a fire; (4) the defendants negligently failed to design the vehicle and its component parts so that it would not be a hazard to a consumer purchaser; (5) the defendants negligently failed to test or inspect the vehicle and its component parts; (6) the defendants manufactured or sold the vehicle with defective component parts or a defective engine, thereby causing a hazard to users of the vehicle; (7) the defendants failed to warn the plaintiff of the aforesaid conditions; (8) the defendants breached their statutory warranty of merchantablility in that the vehicle was not fit for the ordinary purpose for which it was sold; and (9) the defendants sold the vehicle in a defective, unsafe and dangerous condition, thereby subjecting the plaintiff to an unreasonable risk of injury.

On December 1, 2010, the defendants filed a motion

for summary judgment on the ground that the plaintiff, "among other things, [had] adduced no evidence, expert or otherwise, to establish that [1] the vehicle at issue was defectively designed or manufactured, or [2] that the alleged defect [in the vehicle] caused [the plaintiff's] injuries." In their supporting memorandum, the defendants argued that the plaintiff "failed to elicit any evidence in discovery that the [v]ehicle was defective in that it was unreasonably dangerous, that any alleged defect caused [the plaintiff's] injury, that any alleged defect existed at the time of sale, or that the [v]ehicle reached [the] [p]laintiff without substantial change in condition." They also argued that the plaintiff failed to set forth any evidence regarding a failure to warn. Attached to the defendants' motion and supporting memorandum were multiple documents, including portions of the plaintiff's deposition testimony, portions of the deposition testimony of the plaintiff's expert, Richard E. Morris, a certified fire investigator, and copies of two reports written by Morris. The defendants conceded, for purposes of the motion for summary judgment only, the truth of the following deposition testimony of the plaintiff: On or about October 16, 2006, the plaintiff purchased the vehicle from the dealership. The plaintiff utilized the vehicle for his commute to and from his place of employment, which was approximately sixty miles each way, and he made the trip approximately forty times in the vehicle before the incident on November 15, 2006. The plaintiff put approximately 2800 miles on the vehicle traveling to and from work.[3] Prior to the fire, the plaintiff had no problems with the vehicle and never made any complaints about it. Before the fire, the plaintiff was satisfied with the operation of the vehicle.

The defendants also attached portions of Morris' deposition at which he testified that he was "not offering an opinion that the [vehicle] was defective . . . ." He also agreed that he was not an expert in automobile electronics, design or manufacture, and that he was not an expert in fuel line component manufacture or design. Morris also testified that his research did not reveal any history of similar fires in other Mazda3s. The defendants also attached two reports written by Morris in which he opined, after examining another Mazda3, referred to by him as an exemplar vehicle, that the "fire [in the plaintiff's vehicle] was most likely caused by a fuel leak in the fuel rail system." Morris further opined that "either the clip was improperly installed on the gas line which allowed it to loosen or that a gasket was improperly installed allowing gasoline to seep through and drop onto the engine manifold." He further stated: "[T]his fire is still a result of the gas lines, the plastic and rubber fittings and gas lines associated with the fuel rail of this vehicle and . . . the fire appears to be from the cause of a mechanical failure and . . . is the direct result of gasoline leaking on a hot surface causing

the vehicle to catch fire."

On January 3, 2011, the plaintiff filed an objection to the defendants' motion for summary judgment on the basis that the plaintiff had "provided sufficient evidence that the vehicle . . . harbored a defective design and/or improper installation of automotive parts that ultimately caused a car fire and, subsequently, the [p]laintiff's injuries. Therefore, the [p]laintiff has set forth a prima facie case for his claim under the [act]." He argued in his supporting memorandum that the court should deny the defendants' motion because he did submit, by means of Morris' testimony, reports and affidavit, sufficient evidence that the vehicle was defectively designed or manufactured. Specifically, the plaintiff cited Morris' testimony that "Morris came to the conclusion that the plastic release tab clips on the gas line and fuel lines and/or gaskets were defective in that they were flimsy, did not function correctly and ultimately failed, thereby serving as the most likely cause of the car fire." The plaintiff also cited Morris' testimony that he was "pretty amazed that the clip to the fuel line was flimsy and, by a simple touch, sprung off the fuel line."[4]

Additionally, the plaintiff provided Morris' affidavit in which Morris attested that he is familiar with external and internal components of automobiles, that he is a private fire investigator who regularly inspects automobiles in an effort to identify the origin and cause of fires, that he conducted an origin and cause of fire investigation on the plaintiff's vehicle, that it was his professional opinion that "the release tab clip on the gas line and/or gasket did not function correctly and failed, thereby being the most likely cause of the [vehicle's] fire [and that] [t]his situation would allow gasoline to escape and seep through then drop onto the engine manifold." He further averred that the cause of the vehicle's fire "was a mechanical failure related to the plastic and rubber fillings and/or gas lines associated with the fuel rail of [the] vehicle. . . . As a result of [this] mechanical failure, gasoline proceeded to leak onto a hot surface, thereby causing the vehicle to catch fire." The plaintiff argued that Morris' expert testimony, reports and affidavit, all of which were attached as exhibits to the plaintiff's objection and supporting memorandum in opposition to the defendants' motion for summary judgment,[5] provided sufficient evidence to establish a prima facie claim under the act.[6] He further argued that, even if Morris did not qualify as an expert for all aspects of this case, "there still exists a genuine issue of material fact as to whether the defective condition of the vehicle was the proximate cause of the [p]laintiff's harm."

On February 16, 2011, the defendants filed a reply brief in further support of their motion for summary judgment. In their reply, the defendants asserted that

Morris, the plaintiff's "sole expert witness . . . has not—and cannot—provide an opinion concerning whether the vehicle's fuel system was defectively designed or manufactured." The defendants specifically cited to Morris' deposition testimony where he stated that he was not offering an opinion that the vehicle was defective and that he was not an expert in "[1] automobile mechanics, [2] automobile electronics, [3] the design or manufacture of any automobile components related to fuel lines . . . [4] the design of automobiles . . . or [5] the manufacture of automobiles . . . ." (Internal quotation marks omitted.) They also argued that the plaintiff's alternate argument concerning proximate cause was a "red herring" in that the plaintiff *first* must demonstrate a defect causing an unreasonably dangerous condition before proving proximate cause and that he failed to provide any competent expert testimony regarding a defect in the vehicle.

On June 22, 2011, the court granted the defendants' motion for summary judgment. In its memorandum of decision, the court stated: "Connecticut's general rule requires competent expert evidence where the issues involve a question beyond the field of ordinary knowledge and experiences of judges and jurors. In particular, in cases involving automobiles, expert testimony is particularly essential due to the highly technical, complex and specialized questions raised by such claims." The court subsequently found that because Morris, a certified fire investigator, did not offer an opinion that the vehicle was defectively designed or manufactured, the plaintiff "failed to proffer sufficient expert testimony as required pursuant to [the act]."[7] Additionally, the court determined that without such expert testimony, a jury would be unable to determine the proximate cause of the plaintiff's harm. On July 7, 2011, the plaintiff filed a motion to reargue, and, on July 28, 2011, the court denied that motion.[8] This appeal followed. Additional facts will be set forth as necessary.

On appeal, the plaintiff claims that the court erred in granting the defendants' motion for summary judgment on the ground that the plaintiff failed to provide sufficient evidence that the vehicle was defective and unreasonably dangerous. The plaintiff argues that "the trial court granted the defendants' . . . motion for summary judgment requiring the plaintiff . . . to produce expert testimony to prove that [his vehicle] was defective when the gas line mechanism exploded under normal use. The plaintiff . . . contends that sufficient evidence that the [vehicle] was defective at the time of its sale was submitted by both expert opinion and by way of the 'malfunction doctrine.' "[9] We disagree.

"Practice Book § 17–49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . The test is whether the party moving for summary judgment would be entitled to a directed verdict on the same facts." (Internal quotation marks omitted.) *Nipmuc Properties, LLC* v. *Meriden*, 130 Conn. App. 806, 811–12, 25 A.3d 714, cert. denied, 302 Conn. 939, 28 A.3d 989 (2011), cert. denied, U.S. , 132 S. Ct. 1718, 182 L. Ed. 2d 253 (2012). "Our review of the trial court's decision to grant [a] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Montanaro* v. *Balcom*, 132 Conn. App. 520, 524–25, 35 A.3d 280 (2011).

The plaintiff argues that "[c]ontrary to allegations made by the [defendants] in their [appellate brief], the [plaintiff] presented various forms of evidence and testimony, both expert and otherwise, to establish a product defect claim that the subject vehicle at issue was defectively designed and/or manufactured pursuant to the [act]." We conclude that the court properly rendered summary judgment in this case.

"[I]n order to recover under the doctrine of strict liability in tort the plaintiff must prove that: (1) the defendant was engaged in the business of selling the product; (2) the product was in a defective condition unreasonably dangerous to the consumer or user; (3) the defect caused the injury for which compensation was sought; (4) the defect existed at the time of the sale; and (5) the product was expected to and did reach the consumer without substantial change in condition." (Internal quotation marks omitted.) *Potter* v. *Chicago Pneumatic Tool Co.*, 241 Conn. 199, 214, 694 A.2d 1319 (1997). "A product may be defective due to a flaw in the manufacturing process, a design defect or because of inadequate warnings or instructions. . . . Under § 402A of the Restatement (Second) of Torts, a manufacturer is strictly liable for injuries suffered if the product was sold in a defective condition unreasonably dangerous to the user . . . ." (Citations omitted; internal quotation marks omitted.) *Vitanza* v. *Upjohn Co.*, 257 Conn. 365, 373–74, 778 A.2d 829 (2001). "For a product to be unreasonably dangerous, it must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics." (Internal quotation marks omitted.) *Metropolitan Property & Casualty Ins. Co.* v. *Deere & Co.*, 302 Conn. 123, 131, 25 A.3d 571 (2011).

Although it is true that an ordinary consumer may, under certain circumstances, be able to form expecta-

tions as to the safety of a product; *Potter* v. *Chicago Pneumatic Tool Co.*, supra, 241 Conn. 218; we nonetheless consistently have held that "expert testimony is required when the question involved goes beyond the field of the ordinary knowledge and experience of judges or jurors." (Internal quotation marks omitted.) *Keeney* v. *Mystic Valley Hunt Club, Inc.*, 93 Conn. App. 368, 375, 889 A.2d 829 (2006); see also *Metropolitan Property & Casualty Ins. Co.* v. *Deere & Co.*, supra, 302 Conn. 141 ("[i]f lay witnesses and common experience are not sufficient to remove [a] case from the realm of speculation, the plaintiff will need to present expert testimony to establish a prima facie case").

In granting the defendants' motion for summary judgment in this case, the court determined that the issues involved complex questions outside of the ordinary knowledge and experience of jurors and that Morris' opinion on the origin of the fire was insufficient to establish the existence of a design or manufacturing defect in the vehicle. The court noted that Morris "only offered an opinion as to how the fire in the vehicle may have started. He did not offer an opinion that the vehicle was defectively designed or manufactured, and he specifically testified that he is not an expert in automobile mechanics, automobile electronics, the design or manufacture of any automobile components related to fuel line designs of automobiles or the manufacture of automobiles."

We conclude that, considering the evidence presented in the record in a light most favorable to the plaintiff, the court did not err in granting the defendants' motion for summary judgment. The plaintiff presented Morris' opinion to the court, identifying the most likely causes of the engine compartment fire. Morris, who examined an exemplar vehicle's fuel system for potential flaws, however, offered no opinion as to whether the plaintiff's vehicle was defective, testifying at his deposition that he is not an expert in fuel line component manufacture or design, automobile mechanics, automobile electronics or the manufacture or design of automobiles and that he was not opining that the vehicle, in fact, was defective. Although Morris' opinion on the origin of the fire was based, at least in part, on his examination of another Mazda3, which led him to state that he was "pretty amazed that the clip to the fuel line was flimsy and, by a simple touch, sprung off the fuel line" and to conclude that "the plastic release tab clips on the gas line and fuel lines and/or gaskets were defective in that they were flimsy, did not function correctly and ultimately failed, thereby serving as the most likely cause of the car fire," the plaintiff failed to present any expert to opine on the defectiveness of the design or manufacture of the vehicle or of the Mazda3 model.

On the basis of the record before us, we conclude

that, in addition to Morris' expert opinion on causation, the plaintiff was required to provide the opinion of another expert that established sufficient prima facie evidence of the contested product liability issues in the case, e.g., that the vehicle was in a defective condition unreasonably dangerous to the consumer or user, that the defect or defects caused the injury for which compensation was sought, that the defect or defects existed at the time of the sale and that the vehicle after its manufacture was expected to and did reach the consumer without any substantial change in its condition. The plaintiff neither disclosed such an expert nor offered any expert opinion on those product liability issues. Accordingly, we conclude that the court's decision granting the defendants' motion for summary judgment and rendering judgment thereon was appropriate in this case.

The judgment is affirmed.

In this opinion DiPENTIMA, C. J., concurred.

[1] General Statutes § 52-572m (b) provides: " 'Product liability claim' includes all claims or actions brought for personal injury, death or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging or labeling of any product. 'Product liability claim' shall include, but is not limited to, all actions based on the following theories: Strict liability in tort; negligence; breach of warranty, express or implied; breach of or failure to discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation or nondisclosure, whether negligent or innocent."

[2] Although the parties do not contest that the vehicle was new when purchased by the plaintiff, his complaint also alleges that the vehicle had 2800 miles on its odometer at the time of purchase. This allegation, however, is denied by the defendants in their answer. Also, for purposes of the motion for summary judgment, the defendants did not dispute that the plaintiff had driven approximately 2800 miles in the vehicle commuting to and from work.

[3] We recognize that if the plaintiff drove to and from work forty times and the drive was sixty miles each way, the total miles driven would equal 4800. Based on the undisputed mileage at the time of the fire, it is likely that the plaintiff made approximately twenty roundtrips. Any possible discrepancy, however, is not relevant for purposes of our analysis.

[4] We note that, in his report, Morris stated that this opinion was based on his examination of an exemplar vehicle rather than the plaintiff's vehicle because of the damage the plaintiff's vehicle had sustained in the fire.

[5] The record reveals that these were the only documents submitted by the plaintiff in opposition to the motion for summary judgment.

[6] The plaintiff acknowledged that he was "required to provide some form of evidence, including expert testimony, to quantify the precise product defect." The evidence from Morris, however, was directed to causation of harm rather than to establishing "the precise product defect."

[7] We need not determine for purposes of this appeal whether Morris was qualified to give an expert opinion on the defectiveness of the vehicle. It is clear that he stated he was not offering such an opinion in this case.

[8] The plaintiff has not appealed from the court's denial of his motion to reargue.

[9] The defendants argue that the plaintiff failed to raise the applicability of the malfunction theory before the trial court and that, therefore, we should not consider it on appeal. In this appeal, the plaintiff for the first time, argues that his evidence meets the "factors" for establishing a product liability claim pursuant to the malfunction theory of products liability, as articulated by our Supreme Court in *Metropolitan Property & Casualty Ins. Co.* v. *Deere & Co.*, 302 Conn. 123, 133–35 25 A.3d 571 (2011). As set forth in this opinion, however, the plaintiff in this case did not make that claim in opposition to the defendants' motion for summary judgment but instead based his opposition to the defendants' motion on the theory that he had "provided sufficient evidence that the vehicle at issue harbored a defective design and/or improper installation of automotive parts that ultimately caused a car fire and, subsequently, the [p]laintiff's injuries." In his opposi-

tion, the plaintiff relied on the investigation, analysis and reports by his expert, Morris, as to causation of harm rather than alleging the absence of any direct evidence. In the absence of any perceived need to do so, he did not mention or rely on the malfunction theory in opposing the defendants' motion for summary judgment. Therefore, the court had no occasion to consider it prior to rendering summary judgment.

Because we conclude that the plaintiff did not raise the malfunction theory in the trial court prior to its rendering summary judgment, we decline to consider its application on appeal. See generally *Billboards Divinity* v. *Commissioner of Transportation*, 133 Conn. App. 405, 409–411, 35 A.3d 395 (declining to consider argument on appeal that was not raised before trial court in opposing motion for summary judgment), cert. denied, 304 Conn. 916, 40 A.3d 783 (2012); *Hodgate* v. *Ferraro*, 123 Conn. App. 443, 452, 3 A.3d 92 (2010) (plaintiff cannot ambush trial court by arguing on appeal theory not raised in opposition to motion for summary judgment); cf., *Murphy* v. *EAPWJP, LLC*, 306 Conn. 391, 399, 50 A.3d 316 (2012) ("[i]t is well established that a claim must be distinctly raised at trial to be preserved for appeal"); *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 511, 46 A.3d 291 (2012) ("It is fundamental that claims of error must be distinctly raised and decided in the trial court before they are reviewed on appeal. As a result, Connecticut appellate courts 'will not address issues not decided by the trial court.' "); *Przekopski* v. *Zoning Board of Appeals*, 131 Conn. App. 178, 189, 26 A.3d 657 (2011) ("It is well established that an appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court . . . to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." [Emphasis in original; internal quotation marks omitted.]), cert. denied, 302 Conn. 946, 30 A.3d 1 (2011).