[J-116-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF ROBYN JORJEAN WILLIAMS, DECEASED; GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF JEROME I. CAMPBELL, DECEASED; GWENDOLYN PHILLIPS, ADMINISTRATRIX OF THE ESTATE OF ALPHONSO CRAWFORD, DECEASED; NEIL CURTIS WILLIAMS, A MINOR BY HIS GUARDIAN AND NEXT FRIEND, GWENDOLYN PHILLIPS,	:	No. 90 WAP 2001
	:	Appeal from the Order of the Superior Court entered April 10, 2001, at No1924WDA1999, affirming in part and reversing in part the Order of the Court of Common Pleas of Mercer County, Civil Division, dated November 30, 1998, at No1995-4217.
	:	773 A.2d 802 (Pa. Super. Ct. 2001)
	:	ARGUED: September 9, 2002
v.	:	
CRICKET LIGHTERS; SWEDISH MATCH, S.A.; PINKERTON TOBACCO COMPANY; PINKERTON GROUP, INC.; PINKERTON GROUP, INC., T/A/D/B/A CRICKET USA; CRICKET, S.A.; POPPELL, B.V.; WILKINSON SWORD/CRICKET, INC.; WILKINSON SWORD, INC.; NDC CORPORATION AND NATIONAL DEVELOPMENT CORPORATION T/A SHENANGO PARK ASSOCIATES; NDC ASSET MANAGEMENT, INC.; REGIONAL SALES, INC.; UNIVERSAL MATCH COMPANY A/K/A UNIVERSAL MATCH CORPORATION; SWEDISH MATCH, A.B.; CRICKET, B.V; INTER-MATCH, S.A.; FEUDOR, S.A.; SCHICK NETHERLAND, B.V.; WARNER-LAMBERT HOLLAND, B.V.	:	
APPEAL OF: SWEDISH MATCH, S.A.; PINKERTON TOBACCO COMPANY; PINKERTON GROUP, INC.; PINKERTON	:	

GROUP, INC. T/A/D/B/A CRICKET, USA; :
CRICKET, S.A.; POPPELL, B.V.; :
WILKINSON SWORD/CRICKET, INC.; :
WILKINSON SWORD, INC.; UNIVERSAL :
MATCH COMPANY A/K/A UNIVERSAL :
MATCH CORPORATION; SWEDISH :
MATCH, A.B.; CRICKET, B.V.; INTER- :
MATCH, S.A.; AND FEUDOR, S.A. :

Mr. Chief Justice Cappy filed the Opinion that announces the judgment of the Court. Parts I, IV, V, and VI of the Opinion, which are joined by Messrs. Justice Saylor, Castille, and Eakin, express the view of the majority of the Court. Part II of the Opinion is joined by Madame Justice Newman.

OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: DECEMBER 3, 2003**

This is an appeal by allowance. We are asked to resolve whether the Superior Court properly reversed, in part, the trial court's order dismissing all of the claims against the manufacturers and distributors of a cigarette lighter which was allegedly the cause of a fatal fire. For the reasons that follow, we now reverse in part, affirm in part, and vacate in part.

I.

On the night of November 30, 1993, two year old Jerome Campbell ("Jerome") pulled down the purse belonging to his mother, Robyn Williams ("Robyn"), from the top of the family's refrigerator. Jerome retrieved a Cricket disposable butane cigarette lighter from his mother's purse. It is uncontested that this butane lighter lacked any child-resistant feature. Jerome's five year old brother, Neil Williams ("Neil"), observed Jerome use the lighter to ignite some linens. The fire spread to the rest of the family's apartment. After Neil was unsuccessful in his attempts to rouse his mother, he was able to get to a window and

began screaming; a neighbor rescued him. Tragically, Robyn, Jerome, and another minor child of Robyn's, Alphonso Crawford, died in the fire.

Gwendolyn Phillips ("Appellee"), as administratrix of the estates of the three decedents and as guardian of Neil, instituted this action against the manufacturers and distributors of the Cricket lighter (collectively, "Appellants").[1] In her complaint, Appellee raised, inter alia, claims of design defect sounding in both strict liability and negligence, negligent infliction of emotional distress, breach of the implied warranty of merchantability, and punitive damages. These claims were all predicated on Appellee's allegations that Appellants should have manufactured and distributed a lighter that had childproof features.

Appellants filed for summary judgment. The trial court found in favor of Appellants, and dismissed all claims against them. As to the design defect claim sounding in strict liability, the trial court noted that Appellee was required to establish that the Cricket lighter was unsafe for its intended use. Tr. ct. slip op. at 16-17 (citing Azzarello v. Black Bros. Co., Inc., 391 A.2d 1020 (Pa. 1978)). The trial court reasoned that "[t]he term 'intended use' necessarily entails the participation of the 'intended user'." Id. at 17 (citation omitted). Since a two year old child was not the intended user of a cigarette lighter, the trial court found that Appellants could not be liable in strict liability. In addition, the court reasoned that where a product is found to be not defective for strict liability purposes, then a design defect claim sounding in negligence also must fail; it thus dismissed the negligent design claim. Id. at 30. The trial court also dismissed the negligent infliction of emotional distress claim, reasoning that such a claim must be dismissed because Appellee had failed to state a cause of action for negligence. Id. at 36. As to the breach of warranty claim, the trial

[1] Appellee's complaint also named as defendants the owners and managers of the apartment building in which Robyn resided with her family (collectively referred to as the "NDC defendants"). Appellee ultimately negotiated a release with the NDC defendants; the NDC defendants are not involved in this appeal.

court found that Appellee had failed to show that the Cricket lighter was not fit for its ordinary purposes of producing a flame. Id. at 31-32. Finally, the court stated that since there was no evidence of wanton or willful misconduct on Appellants' part, then the punitive damages claim must also be dismissed. Id. at 38.[2]

On appeal, Appellee presented five issues to the Superior Court, claiming that summary judgment should not have been entered on her breach of warranty, negligent infliction of emotional distress, or design defect claims sounding in strict liability or negligence. The Superior Court reversed the trial court's entry of summary judgment on all five of these claims.[3]

As to the strict liability claim, the Superior Court emphatically rejected the trial court's holding that for strict liability purposes, a product must be designed to be safe only for the "intended user". Phillips v. Cricket, 773 A.2d 802, 810-13 (Pa. Super. Ct. 2001). Rather, the court posited that the product must be safe for its intended use, which it found was to create a flame, when used by any user, either intended or unintended. Id. at 813. The court concluded that the Cricket lighter was unsafe because its failure to incorporate a child safety feature allowed it to be operated by an unintended user, namely a small child, thus exposing the child and others to a grave risk of harm. It therefore reversed the trial court's entry of summary judgment on the design defect claim sounding in strict liability.

As to the negligent design claim, the Superior Court noted that the trial court had entered summary judgment because the strict liability claim had been dismissed; the

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[2] The trial court also entered summary judgment on several other claims. As Appellee has not challenged the entry of summary judgment on these claims, we need not detail the trial court's disposition of them.

[3] The Superior Court noted that Appellee had not appealed the entry of summary judgment on several other claims, as it was compelled to affirm that portion of the trial court's order dismissing those claims.

Superior Court reasoned that since it had found that the trial court's determination on the strict liability claim to be erroneous, it must perforce reverse the entry of summary judgment on the negligent design claim. Concomitantly, the Superior Court reversed the entry of summary judgment on the negligent infliction of emotional distress claim as the trial court had dismissed this claim on the basis that the negligence claim had failed.

The Superior Court also reasoned that it must reverse dismissal of the punitive damages claim. In reviewing this issue, the Superior Court expressed the belief that the trial court had dismissed this claim solely because Appellee had no other viable causes of action, and that a punitive damages claim may survive only where there are other viable tort actions. The Superior Court concluded that since it had reinstated four other tort claims raised by Appellee, then the trial court's entry of summary judgment on the punitive damages claim must be reversed.

Finally, the Superior Court did expressly state that it was reversing the trial court's entry of summary judgment on the breach of warranty claim. Yet, the Superior Court provided no analysis as to how it arrived at this conclusion.

Appellants filed a petition for allowance of appeal, which we granted. This appeal then followed.

Appellants contend that the Superior Court erred in reversing the trial court's entry of summary judgment on the strict liability, negligence, negligent infliction of emotional distress, breach of warranty, and punitive damages claims. In reviewing these claims, we examine whether the Superior Court erred in its application of the appellate standard of review of a trial court's entry of summary judgment. That standard declares that an appellate court may reverse the entry of summary judgment only where it finds that the trial court erred in concluding that the matter presented no genuine issue as to any material fact and that it is clear that the moving party was entitled to a judgment as a matter of law. See Pappas v. Asbel, 768 A.2d 1089 (Pa. 2001). In

making this assessment, "we view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." Ertel v. Patriot-News Co., 674 A.2d 1038, 1041 (Pa. 1996). As such an inquiry involves solely questions of law, our review is de novo.

II

Appellants' first claim is that the Cricket lighter was not defective pursuant to § 402A of the Restatement (Second) of Torts. They argue that this court has long held that a product is not defective where it is safe for its "intended use". Echoing the reasoning of the trial court, Appellants argue that a necessary corollary to the "intended use" doctrine is that the product must have been utilized by an "intended user".

Appellants are correct in stating that under Pennsylvania law, a product will be deemed defective only if it "left the supplier's control lacking any element necessary to make it safe for its intended use or possessing any feature that renders it unsafe for the intended use." Azzarello, 391 A.2d at 1027 (emphasis supplied).

Azzarello did not, however, answer whether the "intended use" doctrine necessarily encompassed the requirement that the product need be made safe only for its "intended user". While we have never addressed that question in a strict liability design defect matter, we have explicitly resolved it in a strict liability failure to warn context. See Mackowick v. Westinghouse Electric Corp., 575 A.2d 100 (Pa. 1990). In Mackowick, an electrician, who was one of the plaintiffs in the suit, was injured when electricity arced from a capacitor. The plaintiffs argued that the electrical capacitor was defective because the manufacturer failed to place a warning on the capacitor regarding the dangers of live, exposed electrical wires.

We rejected this argument. We reasoned that a product need be made safe only for its intended user. Id. at 102 and 103. We noted that the electrical capacitor was intended to be accessed and used only by qualified electricians, and not general

members of the public. As experienced electricians are aware of the danger of live, exposed electrical wires, we concluded that the product was safe for its intended user even absent such a warning.

While Mackowick was a failure to warn case, we find that the principle it enunciated is equally applicable to design defect cases. In fact, we cannot perceive how it could be confined exclusively to the failure to warn context. Mackowick stands for the proposition that a product is not defective so long as it is safe for its intended user. Whether the product is allegedly defective due to a lack of a warning, or because its design was ill-conceived, the standard that the product need be made safe only for the intended user appears to be equally applicable.

Yet, there are two primary arguments against utilizing the intended user standard as part of the strict liability design defect test that we must address. The first was articulated by the Superior Court in its opinion below. One of the Superior Court's reasons for rejecting Appellants' argument that a product is not defective if it is safe for the intended user was that such an argument "harkens back to privity principles that were expressly abrogated by the adoption of products liability law." Phillips, 773 A.2d at 811. The Superior Court viewed utilization of the intended user standard as effectively rolling back the clock.

This concern is phantasmic. The Superior Court is correct in concluding that the concept of privity of contract has no place in our strict liability law. See Azzarello, supra. Yet, a declaration that a product is nondefective for strict liability purposes if it is safe for use by its intended user does not reanimate the privity requirement. For parties to be considered to be in privity, a contractual relationship must exist between them. See Salvador v. Atlantic Steel Boiler Co., 319 A.2d 903, 904 n. 1 (Pa. 1978). The intended user doctrine, however, requires no such contractual relationship. For example, in terms of the butane lighter, any adult who borrowed the lighter from the person who

purchased it could be considered an intended user, regardless of the fact that such an adult had no contractual relationship with the manufacturer or distributor of the lighter. Thus, we reject the argument that the intended user doctrine will somehow pollute strict liability with privity requirements.

A second counter-argument to the intended user doctrine is advanced by Appellee. She asserts that the intended user test is artificially narrow. In its stead, she proposes that we examine whether the actual user - whether he was the intended user or not - was a reasonably foreseeable one. Appellee states that since it was reasonably foreseeable that a small child may play with a butane lighter, and that grievous damages could result if a child safety device were not placed on the lighter, then strict liability should still attach even though the child was not the intended user.

There is some visceral appeal to Appellee's argument. For most people - whether learned in the law or laypersons - it is only just that a party who could have foreseen and avoided injuring another, but who fails to do so, is held liable for any injuries caused. This visceral response has been memorialized in our tort law as a negligence cause of action. See, e.g., Morena v. South Hills Health System, 462 A.2d 680, 684 (Pa. 1983).

Yet, the cause of action presently being examined is not a negligence claim; rather, it sounds in strict liability.[4] And strict liability affords no latitude for the utilization of foreseeability concepts such as those proposed by Appellee. We have bluntly stated that

> negligence concepts have no place in a case based on strict liability. Indeed, Section 402A of the Restatement (Second) of Torts makes it clear that the imposition of strict liability for a product defect is not affected by

[4] Later in this opinion, we will have the opportunity to examine whether Appellee has made out a negligence-based design defect claim. See infra.

> the fact that the manufacturer or other supplier has exercised "all possible care."

Lewis v. Coffing Hoist Division, Duff-Norton Co., Inc., 528 A.2d 590, 593 (Pa. 1987). This approach is militated by the fact that our strict liability law places "the product itself . . . on trial, and not the manufacturer's conduct." Id. Accord Kimco Development Corp. v. Michael D's Carpet Outlets, 637 A.2d 603, 606 (Pa. 1993) ("[W]e have been adamant that negligence concepts have no place in a strict liability action."); Spino v. John S. Tilley Ladder Co., 696 A.2d 1169, 1172 (Pa. 1997) ("Evidence of due care by a defendant is both irrelevant and inadmissible in a products liability case since a manufacturer may be strictly liable even if it used the utmost care.")

To give Appellee her due, however, we would be remiss if we did not recognize that this court has at times committed the same error. While we have remained steadfast in our proclamations that negligence concepts should not be imported into strict liability law,[5] we have muddied the waters at times with the careless use of negligence terms in the strict liability arena. One example of this mixing of negligence terms into a strict liability analysis occurs in Davis v. Berwind Corp., 690 A.2d 186 (Pa. 1997). In that matter, one of the questions presented to this court was whether the

[5] Amicus curiae Product Liability Advisory Council, Inc. ("PLAC") would take issue with this statement. In PLAC's view, this court in Duchess v. Langston Corp., 769 A.2d 1131 (Pa. 2001) recently proclaimed that negligence and strict liability are coterminous. We made no such statement in Duchess. In Duchess, this court was asked to determine whether evidence of subsequent remedial measures could be used as substantive evidence of a design defect in a strict liability case, where such evidence would be barred in a negligence case. In analyzing this claim, we exhaustively detailed analyses offered by various courts. The passages on which PLAC relies are primarily where this court quotes from the reasoning employed by other courts, without this court endorsing such reasoning. See, e.g., id. at 1141; and at 1141 n. 14. In no fashion did we state that negligence and strict liability were one in the same cause of action, and we expressly disavow such an interpretation of Duchess.

manufacturer could be held strictly liable where it had manufactured a safe product, but the product was rendered unsafe by subsequent changes. We reasoned that the manufacturer may be held liable, even though it did not make the subsequent change, if the "manufacturer could have reasonably expected or foreseen such an alteration of its product." Id. at 190. Clearly, such a negligence-based test, which focuses on the due care exercised by the manufacturer, is in tension with our firm and repeated pronouncements that negligence concepts have no place in strict liability law.

While it would be imprudent of us to wholesale reverse all strict liability decisions which utilize negligence terms, we can, and do, reaffirm that in this jurisdiction, negligence concepts have no place in strict liability law. Such a firm division between the causes of action is not a senseless exercise in semantics; rather, it is dictated by the very underpinnings of the strict liability cause of action. Strict liability focuses solely on the product, and is divorced from the conduct of the manufacturer. See Lewis, supra. With such a cause of action, it would be the height of illogic to introduce a test which examines whether the manufacturer acted with due care.

Recognition that strict liability is not a type of mongrel derivative of negligence is also consistent with the historical development of this cause of action. Strict liability was intended to be a cause of action separate and distinct from negligence, designed to fill a perceived gap in our tort law. Azzarello, 391 A.2d 1023-24. This court recognized that in a modern industrial society, liability should not necessarily be predicated only on a finding that the defendant failed to exercise due care. Rather, we adopted the strict liability cause of action, finding "that the risk of loss must be placed upon the supplier of the defective product without regard to fault . . . ." Id. at 1024.

Thus, we conclude that in a strict liability design defect claim, the plaintiff must establish that the product was unsafe for its intended user. We also explicitly state that a manufacturer will not be held strictly liable for failing to design a product that was safe

for use by any reasonably foreseeable user as such a standard would improperly import negligence concepts into strict liability law.

In applying this test to the matter sub judice, it is apparent that the trial court properly entered summary judgment on this claim. Appellee does not contest that the butane lighter was intended to be used solely by adults, and not a two year old such as Jerome. Furthermore, she also does not contend that as designed, it was unsafe for use by such an intended user. Accordingly, we conclude that the trial court properly determined that Appellee's strict liability claim could not be sustained pursuant to § 402A, and thus reverse the Superior Court's finding on this issue. [6]

III

Appellants' next claim is that the Superior Court erred in reversing the trial court's grant of summary judgment on Appellee's claim that Appellants negligently designed the Cricket lighter. The crux of their argument is that if we deem that the trial court properly granted summary judgment on Appellee's strict liability claim, then perforce we must hold that her negligence claim also fails.

This reasoning is deeply flawed and we decline to adopt it. As we discussed supra, negligence and strict liability are distinct legal theories. Strict liability examines

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[6] In arguing their position on the strict liability claim, Appellants assert that if this court were not to find in their favor on their § 402A claim, then we should consider, in the alternative, rejecting § 402A in favor of the Restatement (Third) of Torts' new definition for strict liability claims and awarding them relief based upon that provision. See Restatement (Third) of Torts, Products Liability, § 2 (1997).

We will not consider Appellants' issue vis-à-vis the Restatement (Third) of Torts for two reasons. First, Appellants did not argue in their Petition for Allowance of Appeal that we should consider abandoning our current interpretation of strict liability law and adopt the Restatement (Third) of Torts' new definition of this cause of action; thus, the issue has been waived. Shoemaker v. Lehigh Township, 676 A.2d 216, 220 n. 3 (Pa. 1996). Second, even if the issue were not waived, there would be no need for us to examine whether Appellants were entitled to relief on this alternative basis as we have determined that their primary argument is meritorious.

the product itself, and sternly eschews considerations of the reasonableness of the conduct of the manufacturer. See Lewis, supra. In contrast, a negligence cause of action revolves around an examination of the conduct of the defendant. Were we to dispose of a negligence claim merely by an examination of the product, without inquiring into the reasonableness of the manufacturer's conduct in creating and distributing such a product, we would be divorcing our analysis from the elements of the tort. Thus, as the elements of the causes of action are quite distinct, it would be illogical for us to dispose of Appellee's negligence claim based solely on our disposition of her strict liability claim. Instead, we must examine the law of negligence and determine whether the trial court erroneously determined that Appellee's negligence claim failed as a matter of law.

It is axiomatic that in order to maintain a negligence action, the plaintiff must show that the defendant had a duty "to conform to a certain standard of conduct;" that the defendant breached that duty; that such breach caused the injury in question; and actual loss or damage. See Morena, 462 A.2d at 684 n. 5.

Of these four elements, the primary one is whether the defendant owed a duty of care. Althaus v. ex rel. Cohen, 756 A.2d 1166, 1168 (Pa. 2000). To determine whether the defendant owed a duty of care, we must weigh the following five factors: "(1) the relationship between the parties; (2) the social utility of the [defendant's] conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the [defendant]; and (5) the overall public interest in the proposed solution." Id. at 1169. No one of these five factors is dispositive. Rather, a duty will be found to exist where the balance of these factors weighs in favor of placing such a burden on a defendant.

In applying the Althaus test to the instant matter, we remain cognizant of the fact that we are reviewing the entry of summary judgment on this claim. Thus, as noted

supra, we are directed to "view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." Ertel, 674 A.2d at 1041.

As to the first prong of the Althaus test, there was clearly a relationship between Robyn, as the purchaser of the butane lighter, and Appellants. Thus, as to the negligence claim springing from Robyn's death, this prong weighs in favor of finding a duty. The existence of a relationship between Robyn's children and Appellants, however, is less certain. Thus, as to the negligence claims linked with the estates of the two deceased children and with Neil, the surviving child, we are unable to find that this factor weighs in favor of finding a duty.

Next, we examine the social utility of Appellants' conduct, namely, the production of a butane lighter without child safety features. A butane lighter has obvious social utility as a reliable, convenient method to create a flame. Yet, the benefits of one lacking a child resistant feature are not so plain. When taken in the light most favorable to Appellee, the evidence does not show that the utility of the lighter is increased when a child safety device is lacking. Conversely, it is readily apparent that a device which would prevent small children, who lack the discretion and caution of the average adult, from creating a flame would have great utility in our society. Thus, we find that this factor weighs in favor of finding a duty on the part of Appellants.

Third, we must examine the nature of the risk imposed and the foreseeability of the harm incurred. Taken in the light most favorable to Appellee, the evidence established that the risk of injury and property damage resulting from children playing with lighters lacking child safety devices was substantial. Appellee adduced evidence establishing that fires caused by children playing with butane lighters resulted in the deaths of 120 people per year, with an additional 750 people being injured in these fires. Expert Report and Affidavit of John O. Geremia, Ph.D. ("Geremia Affidavit") at 7

(citing the Consumer Product Safety Commission's report on child-resistant cigarette lighters, 53 Fed. Reg. 6833-01 (March 3, 1988)). Furthermore, evidence introduced by Appellee established that the estimated annual cost of child-play butane lighter fires to be between $300-375 million, or 60 to 75 cents per lighter sold. Id. Appellee also introduced evidence that it was reasonably foreseeable to Appellants that their butane lighter would fall into the hands of small children, some of whom would, without being prevented by a child safety device, start fires which would result in severe and potentially fatal injuries to people and great damage to property. Id. at 11.

We find that this evidence establishes that the risk imposed by lack of child-safety features is a serious one and that the harm was foreseeable by Appellants. Thus, we find that the third prong of the Althaus test weighs in favor of the finding of a duty.

Next, we must consider the consequences of imposing a duty. The addition of child safety devices would clearly increase the cost of manufacturing butane lighters. Yet, Appellee adduced evidence that such a cost would be nominal. See Geremia Affidavit at 11-12. Considering that the consequences of imposing this duty on Appellants would be minimal, this factor also weighs in favor of finding a duty.

Finally, we must consider the public interest in imposing a duty upon butane lighter manufacturers to produce a lighter with child safety features. We find that there is a strong public interest in minimizing fires started as a result of children playing with butane lighters. Such fires have catastrophic effects on human beings as well as property. Avoidance of them would be an unquestionable boon to society. Thus, this factor weighs in favor of finding a duty.

In weighing all five of the Althaus factors, when viewing the evidence in the light most favorable to Appellee as nonmoving party, we find that there was an issue on whether Appellants owed a duty of care. As to the negligence claim arising out of

Robyn's death, all five factors, to a greater or lesser extent, weigh in favor of finding such a duty. As to the claims in connection with Robyn's children, only the first prong does not weigh in favor of finding a duty. Yet, the weight attributable to the other four prongs is such that we must conclude that Appellee has adduced sufficient evidence such that these claims survive summary judgment on the issue of the existence of a duty of care.

We now turn to examining the three remaining prongs of the negligence test, namely whether Appellants breached their duty, whether that breach caused the injuries in question, and whether there were damages. See Morena, supra. These three prongs can be examined much more expeditiously than the duty prong. As the parties do not contest that the butane lighter in question lacked a child-safety device, then there is clearly evidence to support a finding that Appellants breached their duty. Next, it is unquestionable that there is evidence of causation. The fire was started by a two year old child playing with a butane lighter lacking a safety device; with such evidence, we cannot say, as a matter of law, that there was no causation. Finally, it is tragically apparent that there were damages. In addition to property damage, three human beings lost their lives, and the surviving child is now bereft of his family.

For the foregoing reasons, we conclude that Appellee introduced evidence such that there was a jury question as to whether Appellants were negligent in designing a butane lighter that lacked a child safety device. We thus affirm the Superior Court's reinstatement of this claim, although we do so on different grounds.

IV

Appellants' next claim is that the Superior Court improperly reversed the trial court's entry of summary judgment on the negligent infliction of emotional distress claim. We disagree. The trial court entered summary judgment on the negligent infliction of emotional distress claim solely on the basis that since Appellee had "failed to state a cause of action

for negligence, we must necessarily conclude that there is no basis for a claim of negligent infliction of emotional distress." Tr. ct. slip op. at 36. As stated supra, however, we have concluded that the trial court had erred when it entered summary judgment on the negligence claim. Since the sole rationale for the trial court's entry of summary judgment on the negligent infliction of emotional distress claims has been discredited, we agree with the Superior Court that the trial court erred in entering summary judgment on this count. Thus, we affirm that portion of the Superior Court's order.

V

The next issue with which we must contend is whether the Superior Court properly reversed the trial court's entry of summary judgment on breach of the implied warranty of merchantability claim. Unfortunately, while the Superior Court's order clearly stated that it was reversing the trial court on this claim, see Phillips, 773 A.2d at 816, the Superior Court provided absolutely no analysis as to how it reached this conclusion. As we cannot review the propriety of its determination absent any reasoning, and are chary of assuming what the reasoning might have been and conducting our review on that basis, we are constrained to vacate this portion of the Superior Court's order and remand with directions for it to explain its rationale in reversing the trial court's entry of summary judgment on the breach of warranty claim.

VI

Finally, we must examine whether the Superior Court properly reversed the trial court's entry of summary judgment on Appellee's punitive damages claim. In reviewing Appellee's claim that the trial court improperly entered summary judgment on this claim, the Superior Court apparently understood the sole basis for the trial court's decision to be that the punitive damages claim could not be sustained where all other remaining tort claims have been dismissed. See Phillips, 773 A.2d at 805 and 816. With this predicate understanding of the trial court's reasoning, the Superior Court concluded that "since we

have concluded that [Appellee] has viable causes of action, and the punitive damages claim was dismissed [by the trial court] on the ground that [Appellee] did not, we must reverse dismissal of the punitive damages claim." Id. at 816.

Had the Superior Court's grasp of the trial court's opinion been correct, its analysis would be unassailable and we would be constrained to affirm its reinstatement of the punitive damages claim. Unfortunately, the Superior Court misapprehended the reasoning of the trial court. In dismissing this claim, the trial court did not provide as either its sole, or even alternative, basis the reasoning that summary judgment was appropriate because a punitive damages claim is not sustainable where all other tort claims have been dismissed. Rather, it found that summary judgment should enter on this claim because Appellee had failed to adduce sufficient evidence; namely, the court found that Appellee had not shown that Appellants had acted in wanton fashion or engaged in willful misconduct. Tr. ct. slip op. at 38.

Thus, the Superior Court reversed the trial court's entry of summary judgment on this claim based on a mistaken understanding of the trial court's reasoning. We must therefore reverse that portion of the Superior Court's reinstating the punitive damages claim, and remand this issue for the court's reconsideration of this issue.

For the foregoing reasons, we reverse that portion of the Superior Court's order reinstating the strict liability design defect claim. Furthermore, we affirm that portion of the order which reinstates the negligence and negligent infliction of emotional distress claims. We also vacate that portion of the order reinstating the breach of warranty claim, and remand with directions to the Superior Court to provide reasoning on its disposition of that claim. Finally, we reverse the Superior Court's reinstatement of the punitive damages claim and remand that issue to that court for reconsideration.

Jurisdiction is relinquished.

Former Chief Justice Zappala did not participate in the decision of this matter.

Mr. Justice Saylor files a concurring opinion joined by Messrs. Justice Castille and Eakin.

Mr. Justice Nigro concurs in the result.

Madame Justice Newman files a concurring and dissenting opinion.