

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

BONNIE J. PARADIS AND PAUL  
PARADIS,

Plaintiffs

v.

WAL-MART STORES, INC.,

Defendant

Civil No. 96-181-P-C

GENE CARTER, District Judge

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Court now has before it Defendant Wal-Mart Stores, Inc.'s Motion and Incorporated Memorandum of Law for Summary Judgment Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure (Docket No. 14). In its motion, Wal-Mart argues that it is entitled to summary judgment on Plaintiff Bonnie J. Paradis's claim against it for negligence. Plaintiffs' Complaint does not assert a claim for negligence against Wal-Mart. In reading Plaintiffs' Opposition to Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment (Docket No. 17), however, the Court understands that Plaintiffs apparently aspire to assert thereby a claim against Wal-Mart for strict liability. The allegations in the Complaint are insufficient to assert such a claim.

Maine law provides,

One who sells any goods or products in a

defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to a person whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods, or to his property, if the seller is engaged in the business of selling such a product and it is expected to and does reach the user or consumer without significant change in the condition in which it is sold.

14 M.R.S.A. § 221 (1980). In order to state a cause of action in strict liability theory, plaintiff must plead that: she has sustained damages; defendant was engaged in business of manufacturing, selling, or supplying a product; the product was supplied by defendant in defective condition which rendered it unreasonably dangerous; and that the defective condition was a proximate cause of plaintiff's damages. Plaintiff has failed to allege that the product was in an unreasonably dangerous condition. Having failed to allege an essential element of a claim for strict liability, the Court will grant Defendant's Motion for Summary Judgment on Count I.

With regard to Count II, Mr. Paradis's loss of consortium is not itself a bodily injury to him. Rather his loss of consortium arises out of, and is derivative from, the bodily injury sustained by his wife. Gillchrest v. Brown, 532 A.2d 692, 693 (Me. 1987). That "consequential injury is to [Mr. Paradis's] psychic interests rather than to [his] physical person or tangible property." Durepo v. Fishman, 533 A.2d 264, 264 (Me.1987) (quoting Norwest v. Presbyterian Intercommunity Hosp.,

293 Or. 543, 548, 652 P.2d 318, 321 (1982)) (loss of parental consortium). See also Sawyer v. Bailey, 413 A.2d 165, 166 (Me.1980) ("right of consortium ... grow[s] out of the marriage relationship"). Since Mr. Paradis's claim is not one for bodily injury to himself but is merely derivative from the bodily injury of his wife, the Court will also dismiss his claim for loss of consortium.

Accordingly, it is hereby ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment be, and it is hereby, GRANTED in favor of Wal-Mart Stores, Inc. on Counts I and II.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 31st day of March, 1997.