IN THE COURT OF APPEALS OF IOWA

No. 1-642 / 00-1666
Filed December 28, 2001

**DIXIE ATHEY, Parent and Next Friend of JAMIE L. KIBBEE,**
Plaintiff-Appellant,

**vs.**

**DEAN SPEICHER, d/b/a DEAN'S CONSIGNMENT AND PAWN, SCOTT HENRY, KAREN (MILLER) HENRY, Individually and as Parent of JOSEPH MILLER,**
Defendants-Appellees.

FILED
SEP 2 2001
CLERK SUPREME COURT

---

Appeal from the Iowa District Court for Black Hawk County, Todd Geer, Judge.

Dixie Athey appeals the district court's grant of summary judgment to Dean Speicher d/b/a Dean's Consignment & Pawn, the shop that sold a BB gun that injured Jamie Kibbee, in this personal injury action. **AFFIRMED.**

Michael M. Pedersen, Waterloo, for appellant.

Thomas P. Peffer of Shuttleworth & Ingersoll, Cedar Rapids, for appellee-Dean Speicher, d/b/a/ Dean's Consignment & Pawn.

Karla J. Shea of Yagla, McCoy & Riley, P.L.C., Waterloo, for appellee-Scott Henry.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

**HUITINK, P.J.**

Dixie Athey appeals from a summary judgment ruling dismissing negligence and strict liability claims against Dean's Consignment and Pawn and its owner, Dean Speicher, that she brought on behalf of her son, Jamie. Athey argues the district court erred in finding as a matter of law that Speicher breached no legal duty of care by selling a BB gun to a minor, Joseph Miller. She also argues the district court incorrectly found as a matter of law that Speicher's sale of the BB gun to Miller was not a proximate cause of Jamie's injuries. Athey additionally contends that as a merchant Speicher is strictly liable for personal injuries caused by a defective product he placed into the stream of commerce.

Our standard of review on a motion for summary judgment is well settled and need not be repeated here. *See Howell v. Merritt Co.,* 585 N.W.2d 278, 280 (Iowa 1998).

The summary judgment record indicates Speicher sold fourteen-year-old Miller a used BB gun. Approximately one year after this sale, Jamie was injured when Miller pointed the BB gun at him and the gun's safety mechanism failed, allowing the gun to discharge, striking Jamie in the eye.

Athey's negligence claim is entirely premised on Speicher's sale of a BB gun to fourteen-year-old Joseph Miller. Even if the existence of a duty and its breach are assumed, without more, Speicher's sale of a BB gun to a minor could not be the proximate cause of Jamie's injury. *See City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11, 17 (Iowa 2000) (proximate cause requires a showing, as measured by the proximity and foreseeability of the harm, that

defendant's actions were a substantial factor in bringing about plaintiff's injury). There is no evidence that Speicher had any reason to believe Miller would use the BB gun in a negligent or reckless manner. Contrary to Athey's claims, Miller's age alone is not sufficient for us to find the accident causing Jamie's injury was reasonably foreseeable. *See Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 570-71 (Iowa 1997) (forseeability of accident not inferred from negligent act of selling weapon to minor) (citing *Poland v. Earhart*, 70 Iowa 285, 287, 30 N.W. 637, 638 (1886)). We conclude the district court properly dismissed Athey's negligence claim.

The district court also properly dismissed Athey's strict liability claim. As the nonmoving party, Athey had the burden to come forward with specific facts showing a prima facie case for holding Speicher strictly liable for Jamie's injuries. *Gruener v. City of Cedar Falls*, 189 N.W.2d 577, 580 (Iowa 1971); *accord Iowa Civil Rights Comm'n v. Massey-Ferguson, Inc.*, 207 N.W.2d 5, 8 (Iowa 1973). The evidence in the summary judgment record shows no more than the BB gun's safety mechanism malfunctioned a year after it was purchased. Athey failed to present any evidence that the BB gun was in a defective condition and unreasonably dangerous at the time it was sold to Miller. *See Lovick v. Wil-Rich*, 588 N.W.2d 688, 698-99 (Iowa 1999); *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 328 (Iowa 1996) (in strict liability action, plaintiff must establish product was in defective condition and unreasonably dangerous to the consumer when sold). We also affirm on this issue.

Because the foregoing is dispositive, we do not address the remaining issues raised on appeal. The judgment of the district court is affirmed in its entirety.

**AFFIRMED.**