

IN THE SUPREME COURT OF TEXAS

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No. 98-0881
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THE KROGER CO. AND
DIRECT SOURCE INTERNATIONAL, INC., PETITIONERS

v.

RHONDA RENE ROBINS, INDIVIDUALLY AND
AS NEXT FRIEND OF JACKIE WAYNE ROBINS, JR., A MINOR,
AND JACKIE WAYNE ROBINS, SR., RESPONDENTS

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS
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PER CURIAM

In 1989, three-year-old Jackie Robins, Jr. found a disposable butane lighter in his parents' van and used it to start a fire in which he was severely burned. His parents sued The Kroger Co. and Direct Source International, Inc. for selling the lighter without a child-resistant mechanism. Plaintiffs asserted causes of action for breach of warranty, negligence, negligence per se, and products liability. Defendants moved for summary judgment on all plaintiffs' claims on a single ground: that the manufacturers and sellers of lighters or other such products intended only for adult use have no legal duty to make them child-resistant. The district court granted both defendants' motions. The court of appeals reversed only on plaintiffs' defective-design products-liability claim,¹ and plaintiffs have not petitioned for review. For the reasons we explained in *Hernandez v. Tokai*

¹ 982 S.W.2d 156.

Corp.,² the court of appeals correctly rejected defendants' no-duty argument and remanded the case to the district court. The court of appeals added, however, "that a fact issue exists under the risk-utility analysis as to whether Kroger and DSI breached their duty to design a safe product".³ The existence of such a fact issue cannot be determined on this record because defendants' motions did not attempt to apply the risk-utility test to plaintiffs' design-defect claims. Thus, defendants' petitions for review are denied.

Opinion delivered: September 9, 1999

² ___ S.W.2d ___ (Tex. 1999).

³ 982 S.W.2d at 164.