

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 08-10284

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEBRUARY 17, 2009 THOMAS K. KAHN CLERK
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D.C. Docket No. 06-01462-CV-T-24-TBM

GERALD LAKE, as personal representative of the  
Estate of Jenna Lake, deceased,  
GERALD LAKE, as survivors of Jenna Lake, deceased,  
LAURIE LAKE, as survivors of Jenna Lake, deceased,  
JESSICA LAKE BROCKMAN, as survivors of Jenna Lake,  
deceased,  
SARAH LAKE, as survivors of Jenna Lake, deceased,  
MATTHEW LAKE, as survivors of Jenna Lake, deceased,  
BENJAMIN LAKE, as survivors of Jenna Lake, deceased,  
JONATHAN LAKE, as survivors of Jenna Lake, deceased,  
MICHAEL LAKE, as survivors of Jenna Lake, deceased,

Plaintiffs-Appellants,

versus

TENNECO, INC., a Delaware corporation,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Florida

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(February 17, 2009)

Before EDMONDSON, Chief Judge, and ANDERSON, Circuit Judge, and COHILL,\* District Judge.

PER CURIAM:

The family of Jenna Lake sued Tenneco, Inc. after Lake and her boyfriend, Jason Epps, died from inhaling carbon monoxide while in Epps's minivan.

According to the family, Tenneco, which manufactured the muffler that produced the deadly carbon monoxide, failed to warn Epps of the danger of carbon monoxide poisoning from auto exhaust or to instruct him on how to install the muffler properly. The family says, because of those failures, Epps incorrectly installed the muffler on his minivan, which led to his and Lake's death.

After discovery, Tenneco moved for summary judgment. Tenneco claimed that it had no duty to warn Epps because the muffler was not dangerous, and any danger of carbon monoxide poisoning was obvious. The district court agreed, stating that it "is common knowledge that if a car's exhaust pipe is positioned in a manner that allows carbon monoxide to enter into a car that has all of its windows closed, . . . there is a risk that the passengers will die from carbon monoxide poisoning." This appeal followed.

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\* Honorable Maurice B. Cohill, Jr., United States District Judge for the Western District of Pennsylvania, sitting by designation.

We disagree with the district court. The muffler included no installation instructions or warning about the danger of carbon monoxide poisoning if it was improperly installed. Moreover, at all relevant times, the minivan was parked outside in a well-ventilated area. Under those facts, we cannot say, as a matter of law, that the danger of carbon monoxide poisoning was obvious to an objective, reasonable person. We, therefore, vacate the district court's judgment and remand the case for further proceedings.

VACATED and REMANDED.