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ALVORD, J., dissenting. The case at bar is a very tragic case involving a young child who suffered serious injuries from an eighteen pound cinder block that had been dropped on her head by a ten year old playmate from the third floor balcony of the landlord's six unit apartment building. While I in no way condone the failure of the landlord to remove the cinder blocks and other debris from the yard of its rental property, I cannot agree with the majority that the child's injuries were a reasonably foreseeable consequence of the landlord's conduct. Accordingly, I respectfully dissent.

This is an appeal from a summary judgment rendered against the plaintiffs, Adriana Ruiz and Olga Rivera,[1] in favor of the defendant, Victory Properties, LLC, in an action for negligence. The trial court concluded that there were no genuine issues of material fact as to whether the defendant owed a duty to the plaintiffs under the circumstances of this case. In reaching this determination, the court was required to consider the facts in the light most favorable to the plaintiffs, the nonmoving parties. *Interface Flooring Systems, Inc.* v. *Aetna Casualty & Surety Co.*, 261 Conn. 601, 605, 804 A.2d 201 (2002).

In their complaint, the plaintiffs alleged that the defendant landlord owned an apartment building in New Britain (property), that the plaintiffs were lawful tenants of the property and that the defendant failed to remove "debris and loose concrete and cinder blocks" from the property. The complaint further alleged that another tenant of the property, a minor, "picked up a loose piece of concrete/cinder block from a large pile of other broken pieces of cement and cinder blocks loosely located in the backyard of the subject [p]roperty, carried said piece of concrete to the third floor apartment of said subject [p]roperty, walked out onto the back porch and dropped said large piece of concrete/cinder block from the third floor balcony onto the head of [Ruiz], who was standing in the immediate vicinity of the exterior back wooden porch of said property."

Following a hearing on the plaintiffs' application for a prejudgment remedy, they submitted a brief summarizing the testimony and evidence presented at that hearing. The plaintiffs, after repeating the allegations in their complaint, proceeded to describe the object dropped from the balcony as either a "concrete block" or a "cement block" several times throughout the brief. In its memorandum of decision on the application for a prejudgment remedy, the court, *Vacchelli, J.*, stated the facts of the case: "In that accident, [Ruiz], then age seven, was struck on the head by an eighteen pound concrete block dropped by another child playing on a

third floor balcony above her."

On appeal before this court, the plaintiffs consistently have represented that Ruiz was hit by a large piece of concrete or a cinder block. In their appellate brief, the plaintiffs stated that the ten year old playmate "picked up an eighteen pound piece of concrete/cinder block from a large pile of other loose broken pieces of concrete/cinder blocks located in the backyard of the [s]ubject [p]remises." Thrice more in their brief they refer to the "eighteen pound cinder block" or "eighteen pound brick" as being the object that struck Ruiz. Reviewing the facts in the light most favorable to the plaintiffs, and there being no argument to the contrary, I refer to the object dropped on Ruiz' head as an eighteen pound cinder block.

With these facts in mind, it is necessary to review our case law to determine whether the defendant can be held legally accountable for Ruiz' injuries. The majority opinion first sets forth the applicable principles for determining whether the defendant owed a legal duty[2] to Ruiz and then focuses on the foreseeability of the harm that she suffered. It frames the inquiry as "whether a reasonable landlord, knowing that dangerous debris is present in a common area where children are known to play, would be able to foresee that a child was likely to suffer harm of the general nature that [Ruiz] suffered here as a result of children playing in that very area" and concludes that "the appropriate level of generality in the present case is getting hurt by a large rock thrown by another child, and that was certainly foreseeable." I disagree and conclude that simply getting hurt by the cinder block is too general a standard to be used for the test of foreseeability.

By employing a foreseeability test that incorporates such a high level of generality to the harm in this case, the majority essentially has created a strict liability standard.[3] The term "general harm" logically cannot be extended to incorporate any injury that occurs by a piece of debris left in the landlord's common area.[4] "It is impractical, if not impossible, to separate the question of duty from an analysis of the cause of the harm when the duty is asserted against one who is not the direct cause of the harm. In defining the limits of duty, we have recognized that [w]hat is relevant . . . is the . . . attenuation between [the defendant's] conduct, on the one hand, and the consequences to and the identity of the plaintiff, on the other hand. . . . It is a well established tenet of our tort jurisprudence that [d]ue care does not require that one guard against eventualities which at best are too remote to be reasonably foreseeable." (Citation omitted; internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 574–75, 717 A.2d 215 (1998).

Here, the alleged negligent conduct of the defendant was its failure to remove "debris and loose concrete

and cinder blocks" from its property, thereby creating "a dangerous and unsafe condition." The complaint also alleged that the defendant knew or should have known that children assembled and played games on that property. The plaintiffs' basic claim, as I see it, is that Ruiz would not have been injured if the defendant had removed the debris from its property because then there would have been no cinder block for a child to carry up the stairs and to drop from the third floor balcony.[5]

Applying the standards previously discussed, I would frame the relevant duty inquiry as whether the defendant would *reasonably* foresee that a ten year old child would pick up an eighteen pound cinder block, carry it up several flights of stairs to the third floor of the apartment building and drop it on the head of the seven year old Ruiz.[6] This incident happened even though there were adults present to supervise the children and the ten year old playmate saw his younger friend standing in the area below the balcony when he dropped the cinder block into the backyard. I conclude that the harm suffered is too attenuated from the alleged negligent conduct of the defendant. It certainly was foreseeable that a child might trip and fall over the debris or even throw a piece of concrete at another child. In this case, the ten year old, if he had thrown the eighteen pound cinder block at Ruiz in the backyard, could not have caused the type of harm that she suffered by having it dropped three stories onto her head. I cannot agree that the defendant would reasonably foresee that its conduct in leaving cinder blocks and other debris in the backyard would result in the catastrophic result in this case.[7] "To hold otherwise would be to convert the imperfect vision of reasonable foreseeability into the perfect vision of hindsight." *Burns* v. *Gleason Plant Security, Inc.*, 10 Conn. App. 480, 486, 523 A.2d 940 (1987).

I therefore conclude that, under the particular circumstances of this case, the defendant landlord cannot be held liable to the plaintiffs for the harm caused by an eighteen pound cinder block being dropped from a third story balcony onto the head of the minor plaintiff. The law should not countenance the extension of legal responsibility to such an attenuated result. I would affirm the judgment of the trial court and, accordingly, I respectfully dissent.[8]

[1] The plaintiff Olga Rivera brought this action as parent and next friend of the plaintiff Adriana Ruiz, her minor daughter, and on her own behalf.

[2] "The test for determining legal duty is a two-pronged analysis that includes: (1) a determination of foreseeability; and (2) public policy analysis. . . . The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . [In other words], would the ordinary [person] in the defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?" (Citation omitted; internal quotation marks omitted.) *Monk* v. *Temple George Associates, LLC*, 273 Conn. 108, 114–15, 869 A.2d 179 (2005).

[3] The trial court, in discussing the ramifications of extending a duty of care to the defendant under the circumstances of this case, made the following astute observations: "What would be the limitation of liability on a

landlord for personal injury to a tenant if liability is imposed in this case? Suppose there is heavy lawn furniture in the backyard? What about the sandbags or weights used to stabilize a patio umbrella or a moveable basketball backboard? (In fact, one photograph submitted as an exhibit in this case shows a large rock used to stabilize the basketball hoop apparatus in this backyard.) What about a flowerpot near the back steps? If thrown off a balcony, practically anything can constitute a dangerous missile."

[4] The majority contends that the size and the nature of the object were not undisputed. It concludes that the object is a large rock. To me, this conclusion strengthens the defendant's argument that imposing a legal duty under the circumstances of this case would result in strict liability for any objects left in common areas by landlords. Is a landlord obligated to remove every rock, every branch and every piece of debris from its property to avoid liability for possible injuries to a child caused by the irresponsible actions of another child?

[5] As noted in the majority opinion, the plaintiffs also claim that the trial court improperly disregarded the doctrine of the law of the case. See footnote 4 of the majority opinion. Simply stated, a judge is not bound to follow a previous judge's ruling in an earlier stage of the proceedings if the subsequent judge is now of the opinion that the previous ruling was incorrect. See *Breen* v. *Phelps*, 186 Conn. 86, 98–99, 439 A.2d 1066 (1982).

[6] Nothing in the record indicates that there were any previous incidents in which children threw backyard debris from the building's balconies.

[7] Because I conclude that there is no legal duty because the harm was not reasonably foreseeable, it is not necessary to undertake a public policy analysis. See *Monk* v. *Temple George Associates*, *LLC*, supra, 273 Conn. 114–15. Nevertheless, I agree with the trial court that extending liability under the circumstances of this case would create substantial economic and social costs. In its memorandum of decision, the court thoughtfully stated: "It cannot be ignored that this incident was precipitated by a child acting, as children often do, in a playful but irresponsible manner. To create liability for landlords in this situation would likely discourage landlords from renting apartments to families with young children. It would surely drive up the economic costs associated with maintaining and insuring rental properties, without a concomitant benefit of safeguarding against conditions and hazards that are much more prevalent than the one here. Recognizing such a duty, rather than contributing to the welfare of the public, is more likely to create a new burden on families looking for affordable rental housing. Though imposing liability on the defendant would surely be a benefit to the [minor] plaintiff and her family, the overall economic and societal costs militate against such an imposition in like situations."

[8] In part II of its opinion, the majority concludes that the trial court also improperly relied on the doctrine of superseding cause to reach its decision. I disagree with that interpretation. Nevertheless, assuming arguendo that the court erroneously applied the doctrine, this court may uphold the judgment "because [the trial court] reached the right result, even if it did so for the wrong reason." (Internal quotation marks omitted.) *Weigold* v. *Patel*, 81 Conn. App. 347, 353 n.5, 840 A.2d 19, cert. denied, 268 Conn. 918, 847 A.2d 314 (2004).