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## Parental Liability for the Negligent Acts of Their Children

Parental liability for the actions of a minor child does not arise merely by reason of the parent-child relationship. Children are liable for their own wrongdoing.<sup>1</sup> Parental liability is restricted to those incidents where parents have supplied the means that have made their child's conduct dangerous or where parents have knowledge of the vicious propensity of their child and fail to take means to restrict it.<sup>2</sup>

*Nolechek v. Gesuale*<sup>3</sup> established the theory of negligent entrustment. A 16-year-old boy and a friend were riding motorcycles bought for them by their parents. One of the teens did not possess a driver's license, was blind in one eye, had impaired vision in the other, and his long distance vision was uncorrectable. As a result of the defendant landowner's negligence in suspending a steel cable over a road, the boy was killed while riding the motorcycle.

The defendant argued contributory negligence on the part of the decedent's father. The court denied the father's motion to dismiss the counterclaim finding negligent entrustment did exist. Because the child was partially blind, the motorcycle became a dangerous instrumentality in his hands. The court ruled the father had furnished a dangerous instrumentality to his physically handicapped son.

In contrast, in *Young v. Dalidowicz*,<sup>4</sup> a motorist was sued by a minor and the motorist counterclaimed against the minor's parents for contribution on the theory of negligent entrustment of a skateboard. The counterclaim was dismissed. The minor to whom the skateboard was entrusted had no physical impairments. The skateboard, the court found, was not different from other normal items of play used by children, such as seesaws or bicycles. Skateboarding was not considered to be an inherently dangerous or hazardous activity.

### Dangerous Instruments

Some "instruments" that have been considered dangerous are: a BB gun fired by a 3 year old,<sup>5</sup> a chain saw operated by a 17 year old,<sup>6</sup> a motorized bicycle operated by a 12 year old<sup>7</sup> (although a regular bicycle is not considered a dangerous instrument<sup>8</sup>), and a cigarette lighter given to a 14 year old to light a gas grill.<sup>9</sup>

A defect may cause a normally safe instrument to become a dangerous one. In *Vitale v. Singer*,<sup>10</sup> the court upheld a counterclaim alleging that the parents were



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negligent in allowing their son to ride a bicycle they knew was defective.

In the more recent case of *Rios v. Smith*,<sup>11</sup> the Court of Appeals affirmed the appellate court's decision holding that parents could be held liable under a theory of negligent entrustment of a dangerous instrument when the injury is a result of its use by their own child and expanded it to include situations where the entrustment results in the instrument's use by another child.

The testimony in *Rios* indicated that the father knew his sons had driven all-terrain vehicles with passengers and performed dangerous stunts with them. The father also acknowledged that the child who caused the accident had driven the ATV on prior occasions. The court held that the father could have clearly foreseen that the use of the ATV could lead to the injury of a passenger while the friend was driving. It rejected the defendant's argument that a parent could only be liable under such a theory only if the dangerous instrument was entrusted to his or her own child and not to another child.

### Knowing the Child

A parent is charged with the responsibility of knowing their child's behavior and intelligence level. Parents will be held liable under the common law theory of negligent supervision only if they have knowledge of their child's vicious propensities and fail to take measures to restrict them.

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knowledge of their child's vicious propensities and fail to take measures to restrict them. This would include knowledge that the child is in need of extra supervision due to a reduced mental capacity. Knowledge by a parent that the regular play of children may at any moment become hazardous to themselves or those around them would not be cause to impose liability on that parent.

In *Rausch v. McVeigh*,<sup>12</sup> a 22 year old suffering from autism assaulted and attacked his therapist while being treated at the family home. The parents left the house while the plaintiff worked with their son. The court

denied the defendant parents' motion to dismiss the complaint based on the fact that the child's attack on the plaintiff was a result of the parents' negligent supervision. It was held that an autistic child is unable to care and provide for himself and requires greater supervision by his parents.

Similarly, in *Linder v. Bidner*,<sup>13</sup> the court denied the defendant parents' motion to dismiss the plaintiff's complaint because the defendants did owe a duty to society to guard their minor son closely to see that he did not indulge his vicious propensities.

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The evidence showed that the child had a known habit of mauling, pummeling, assaulting and mistreating smaller children when they were lawfully playing or walking on the streets. His parents had been frequently notified by complaining neighbors and others of many similar events. The parents allowed their son to go alone among children and he assaulted the plaintiff with his fists.

Likewise, in *McEntee v. Cappucci*,<sup>14</sup> the defendant parents' motion to dismiss was denied. In a previous encounter their son had injured the plaintiff with a baseball bat resulting in his pleading guilty to second-degree assault. When the second identical incident occurred, the parents were held liable.

### Adult Children

Generally, there is no liability of parents for their adult child. Liability may be imposed if a duty does arise from the act of supplying a dangerous instrument to a person who the supplier knows is likely to use it to cause harm, even if that person is an adult.

In *Hartssock v. Hartssock*,<sup>15</sup> the Court of Appeals affirmed the granting of summary judgment to the parents of a 24 year old adult child who shot his estranged wife after she refused to reconcile with him. The son used a 12-gauge shotgun, which he retrieved from his room at his parent's house. The Court found that the defendant parents had no duty to protect the plaintiff from their son's independent activities. Retrieving the weapon from his parent's home was not akin to his parent's supplying the murder weapon.

Parents generally have no duty to keep under surveillance and thereby be responsible to their own children for injuries they sustain. The leading case, *Holodook v. Spencer*,<sup>16</sup> held that a minor plaintiff has no cause of action against his or her parents for negligent supervision in cases where no duty was ordinarily owed apart from the family relation. The court granted a motion to dismiss the complaint filed by the minor child against his parents. The 4 year old plaintiff allegedly darted out from between parked cars and was struck by an automobile driven by the defendant. The parents had no liability for

allegedly improper supervision of their child.

In *Northrop v. Hogestyn and Northrop*,<sup>17</sup> the court granted the mother and father's motion to strike the complaint. The defendant Hogestyn employed a minor child to mow her lawn with a power lawn mower she owned. His younger brother, age 7, came along with him. The younger brother was injured when the power mower cast a stone that struck him in his left eye so that it thereafter had to be enucleated and replaced with an artificial one.

The court found that the parents were not negligent in failing to super-

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viser their children while mowing the lawn. The children had the capacity and intelligence to act for themselves and there were no special circumstances present which would require parental surveillance.

The same holding was applied in *Graney v. Graney*,<sup>18</sup> where the infant plaintiff fell from an 11-foot high slide in a school playground, and in *Ryan v. Fahley*,<sup>19</sup> where the minor plaintiff had his hand run over by a power-driven lawnmower.

### Breaching a Duty

An injured child can sue his negligent parent only for breaching a duty the parent owes to the world at large.

In *Allstate Insurance Company v. Reliance Insurance Company*,<sup>20</sup> the mother had negligently entrusted a car to her child who did not have a driver's license, resulting in injuries to the child. The injured child did have the right to sue her negligent parent for breaching a duty that the parent owed to any other person.

Similarly, in *Acquaviva v. Piazzolla*,<sup>21</sup> the court found the evidence sufficient to hold the parents liable where the 1-year-old infant was run

over by the family car that rolled down the driveway after his 3-year-old brother disengaged the emergency brake.

The evidence showed that the parents had let the 3 year old play in the unlocked car on more than one occasion and that the car was a dangerous instrument. A motion for leave to appeal was dismissed.

### Conclusion

It is the parents' responsibility to know their children's capacity and intelligence levels. Negligent supervision generally is not enough for a parent to be found liable for harm caused by their minor child.

A parent who either provides a child with the means to cause harm or fails to prevent an injury they know the child is likely to cause, may be found liable for resulting damage.

Finally, only if a parent breaches a duty owed to the world at large will a parent be liable for injuries to their own child. When evaluating parental liability situations, the courts seem to extend the Socratic directive "know thyself" to include their children as well.

(1) See *Steinberg v. Cauchois*, 249 A.D. 518, 293 N.Y.S.2d 147 (2d Dept. 1937).

(2) See *Knopf v. Muntz*, 121 N.Y.S.2d 422 (New York Cty Sup.Ct. 1952).

(3) *Nolechek v. Gesuale*, 46 N.Y.2d 332, 413 N.Y.S.2d 340 (1978).

(4) *Young v. Dalidowicz*, 92 A.D.2d 242, 460 N.Y.S.2d 82 (2d Dept. 1983).

(5) See *Masone v. Gianotti*, 54 A.D.2d 269, 388 N.Y.S.2d 322 (2d Dept. 1976).

(6) See *Bucholtz v. Grimmer*, 50 A.D.2d 1062, 376 N.Y.S.2d 277 (4th Dept. 1975).

(7) See *Lalonia v. Bankers & Shippers Ins. Co.*, 31 N.Y.2d 830, 339 N.Y.S.2d 680 (1972).

(8) See *Steinberg v. Cauchois*, supra note 1.

(9) See *Bottillo v. Poette*, 152 A.D.2d 840, 544 N.Y.S.2d 47 (3d Dept. 1989).

(10) *Vitale v. Singer*, 82 A.D.2d 802, 441 N.Y.S.2d 422 (2d Dept. 1981).

(11) *Rios v. Smith*, 95 N.Y.2d 647, 722 N.Y.S.2d 220 (2001).

(12) *Rausch v. McVeigh*, 105 Misc.2d 163, 431 N.Y.S.2d 887 (Albany Cty Sup.Ct. 1980).

(13) *Linder v. Bidner*, 50 Misc.2d 320, 270 N.Y.S.2d 427 (Queens Cty Sup.Ct. 1966).

(14) *McEntee v. Cappucci*, 183 Misc.2d 70, 701 N.Y.S.2d 766 (Kings Cty Civ.Ct. 1999).

(15) *Hartssock v. Hartssock*, 189 A.D.2d 993, 529 N.Y.S.2d 512 (3d Dept. 1993).

(16) *Holodook v. Spencer*, 36 N.Y.2d 35, 364 N.Y.S.2d 859 (1974).

(17) *Northrop v. Hogestyn and Northrop*, 75 Misc. 2d 486, 348 N.Y.S.2d 106 (Ontario Cty Sup.Ct. 1973).

(18) *Graney v. Graney*, 43 A.D.2d 207, 350 N.Y.S.2d 207 (3d Dept. 1973).

(19) *Ryan v. Fahley*, 43 A.D.2d 429, 352 N.Y.S.2d 283 (4th Dept. 1974).

(20) *Allstate Insurance Co. v. Reliance Insurance Co.*, 85 Misc.2d 734, 380 N.Y.S.2d 923 (Nassau Cty. Sup.Ct. 1976).

(21) *Acquaviva v. Piazzolla*, 62 N.Y.2d 604, 478 N.Y.S.2d 1023 (1984).