Case Western Reserve Law Review

Volume 17 | Issue 1 Article 13

1965

Parent and Child--Tort Liability of Parent to Unemancipated Child [*Teramno v. Teramano*, 1 Ohio App. 2d 504, 205 NE.2d 586 (1965)]

John B. Lindamood

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

 Part of the Law Commons

Recommended Citation

John B. Lindamood, *Parent and Child--Tort Liability of Parent to Unemancipated Child [Teramno v. Teramano, 1 Ohio App. 2d 504, 205 NE.2d 586 (1965)]*, 17 W. Rsrv. L. Rev. 343 (1965)
Available at: https://scholarlycommons.law.case.edu/caselrev/vol17/iss1/13

This Recent Decisions is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Parent and Child--Tort Liability of Parent to Unemancipated Child [*Teramno v. Teramano*, 1 Ohio App. 2d 504, 205 NE.2d 586 (1965)]

Erratum

PAGE 345, LINE 14: change "negligence" to "conduct."

This recent decisions is available in Case Western Reserve Law Review: https://scholarlycommons.law.case.edu/caselrev/vol17/iss1/13

fect on union activities would be the same. Such a result would be unfortunate.

Management has also benefited from the present decision in that an employer has the right to cease doing business entirely for any reason whatsoever. This right was held to be absolute, for to hold otherwise "would represent such a startling innovation that it should not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent . . . ."[22] Such a decision is in keeping with the fundamental concepts of American free enterprise.

DAVID R. WILLIAMS

PARENT AND CHILD — TORT LIABILITY OF PARENT TO UNEMANCIPATED CHILD

Teramano v. Teramano, 1 Ohio App. 2d 504, 205 N.E.2d 586 (1965).

IN 1891, a Mississippi court established, for the first time in the United States, a rule insulating parents from personal tort actions brought by their children.[1] In *Hewlett v. George*,[2] the court held, without reference to existing authority, that public policy forbade a cause of action by a child against his parent for a personal tort. In 1903, a Tennessee court, followed *Hewlett v. George* and expanded this doctrine, adding erroneously that there was a common-law rule forbidding a personal injury action by a child against his parent.[3]

Despite its doubtful basis, the theory that an unemancipated minor child has no cause of action against a parent for negligence has been generally accepted in a majority of American jurisdictions.[4] Recently, however, several inroads have been made to limit the strict rule set forth in *Hewlett*. In most jurisdictions, an exception has been made to the no-suit rule for an injury to a child resulting from a willful or malicious tort committed by the parent.[5] A second exception has been adopted where a child is injured while

---

[22] *Id.* at 270.

the parent is acting within the scope of his vocation.[6] This trend to ameliorate the harsh effects of the non-liability rule has, however, been limited. Perhaps one of the limiting factors is the frequent implication that a great deal of discretion must be accorded to parents in developing a course of conduct for the growth of their child.[7] Thus, an injury to the child resulting from negligence on the part of the parent, while in the discharge of parental duties, has been held insufficient to support a cause of action.[8]

In the Ohio Court of Appeals case of *Teramano v. Teramano*,[9] the plaintiff, a minor child, was injured when struck by his father's car. The complaint alleged that the father, while intoxicated, entered the driveway at a high rate of speed, knowing that the driveway served as a popular means of ingress and egress from the back door of the house. On appeal from the trial court's judgment directing a verdict for the defendant father, the Cuyahoga County Court of Appeals held that a complaint by a minor child alleging willful misconduct on the part of the parent stated a valid cause of action.[10] Further, the court said that such activity could in no way be related to the father's duties as a parent. In recogniz-

[1] Hewlett v. George, 68 Miss. 703, 9 So. 885 (1891).

[2] *Ibid.*

[3] McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664 (1903). It should be pointed out, however, that *Hewlett* did not mention the existence of a common law rule permitting such an action. On the contrary, there is authority that such an action for personal tort was recognized at common law. See, *e.g.*, McCurdy, *Torts Between Persons in Domestic Relation*, 43 HARV. L. REV. 1030, 1056 (1930).

[4] PROSSER, TORTS § 101 (2d ed. 1955); Annot., 19 A.L.R.2d 423 (1951). See also Worrell v. Worrell, 174 Va. 11, 4 S.E.2d 343 (1939). The Virginia Supreme Court of Appeals pointed out that the immunity rule, arising from a disability to sue and not from a lack of a violated duty, is at most a qualified privilege.

[5] Wright v. Wright, 85 Ga. App. 721, 70 S.E.2d 152 (1952); Nudd v. Matsoukas, 7 Ill. 2d 608, 131 N.E.2d 525 (1956); Leggett v. Leggett, 216 N.Y.S.2d 781 (Sup. Ct. 1961); Decker v. Decker, 20 Misc. 2d 438, 193 N.Y.S.2d 431 (Sup. Ct. 1959); Henderson v. Henderson, 11 Misc. 2d 449, 169 N.Y.S.2d 106 (Sup. Ct. 1957); Cowgill v. Boock, 189 Ore. 282, 218 P.2d 445 (1950). *Contra*, Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905).

[6] Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905 (1930); Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743, *modified*, 161 Ohio St. 241, 118 N.E.2d 411 (1953); Worrell v. Worrell, 174 Va. 11, 4 S.E.2d 343 (1939); Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1962); 6 OHIO JUR. 2d *Automobiles* § 256 (1954).

[7] Signs v. Signs, *supra* note 6; Borst v. Borst, *supra* note 6. See McCurdy, *supra* note 3, at 1078.

[8] See, *e.g.*, Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1952).

[9] Teramano v. Teramano, 1 Ohio App. 2d 504, 205 N.E.2d 586 (1965).

[10] *Id.* at 510, 205 N.E.2d at 590. The court reasoned that the father who was driving while intoxicated was guilty of willful misconduct. *Ibid.*

ing the cause of action, the court was careful to define the requisites necessary for removal of the parental "veil of immunity" by limiting the definition of willful misconduct to the facts involved in each case.[11] Recognizing the need for parental discretion in controlling children, the court limited the decision by pointing out that mere negligence on the part of a parent will not sustain a cause of action.[12]

This decision enlarges the doctrine propounded by the earlier Ohio Supreme Court decision of *Signs v. Signs*,[13] which for the first time in Ohio indicated that the "mantle of immunity" disappears when the child is injured by the parent who is pursuing a non-parental activity. Thus, by means of these two decisions, Ohio has aligned itself with the majority of other jurisdictions which recognize the existence of a cause of action on the part of a minor child for injuries resulting from the willful negligence of the parent.[14]

There are many arguments against permitting a cause of action by a child against his parent.[15] In *Teramano,* it was argued that allowing a child to recover would lead to collusion or fraud. The court answered this argument by drawing an analogy to the Ohio guest statute[16] which was passed by the legislature to prevent "friendly" suits. The court argued that if the parent is to be immune from suit, such immunity must be granted by the legislature.

[11] "It is well known that 'willful misconduct' depends upon the facts of a particular case and necessarily involves deliberate, intentional or wanton conduct in doing or omitting to do something, with knowledge or appreciation of the fact that danger is likely to result therefrom." *Ibid.*

[12] *Id.* at 509, 205 N.E.2d at 589-90.

[13] Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743, *modified*, 161 Ohio St. 241, 118 N.E.2d 411 (1953). Plaintiff, a minor child, was injured while playing in his front yard when his father's gasoline pump caught fire. See 6 OHIO JUR. 2d *Automobiles* § 256 (1954).

[14] Wright v. Wright, 85 Ga. App. 721, 70 S.E.2d 152 (1952); Nudd v. Matsoukas, 7 Ill. 2d 608, 131 N.E.2d 525 (1956); Leggett v. Leggett, 216 N.Y.S.2d 781 (Sup. Ct. 1961); Decker v. Decker, 20 Misc. 2d 438, 193 N.Y.S.2d 431 (Sup. Ct. 1959); Henderson v. Henderson, 11 Misc. 2d 449, 169 N.Y.S.2d 106 (Sup. Ct. 1957); Cowgill v. Boock, 189 Ore. 282, 218 P.2d 445 (1950). *Contra*, Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905).

[15] The specific arguments against permitting this cause of action have been discussed and criticized in a number of cases and legal works. See, *e.g.*, Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1952); PROSSER, TORTS § 101 (2d ed. 1955).

[16] OHIO REV. CODE § 4515.02 — the Ohio guest statute — was enacted to prevent "friendly" suits against drivers by guest passengers injured in an accident. The suit usually developed between opposing insurance companies, with plaintiff-guest and defendant-driver as friendly onlookers. The court in the instant case quoting *Signs*, said that "if the legislative branch of the government should be of the opinion that the danger of collusion or fraud is an evil which outweighs the desirability of the right to redress of an unemancipated child for a tort committed by his parent it could abolish that right by legislative enactment." Teramano v. Teramano, 1 Ohio App. 2d 504, 508, 205 N.E.2d 586, 589 (1965).

In order to avoid "friendly" suits which might result in substantial losses to the parent's insurance company, three jurisdictions have refused to recognize the immunity rule where public liability or indemnity insurance was present.[17] However, most jurisdictions, desirous of encouraging an impartial verdict, have consistently refused to allow any mention of insurance at the trial. Nevertheless, insurance companies, wary of collusion or fraud, have adequately protected themselves by providing in their policies a disclaimer provision for actions among family members.[18]

The court in *Teramano,* after citing the decision in *Signs*, summarized the judicial desire to provide an adequate remedy for all injuries incurred, whether among family members or not, when it stated:

> It seems absurd to say that it is legal and proper for an unemancipated child to bring an action against his parent concerning the child's property rights yet to be utterly without redress with reference to injury to his person.
>
> It is difficult to understand by what legerdemain of reason, logic or law such a situation can exist or how it can be said that domestic harmony would be undisturbed in one case and be upset in the other.[19]

Through the expansion of the *Signs* holding in the *Teramano* decision the significance of this long-neglected area of tort law has been recognized in Ohio.

JOHN B. LINDAMOOD

---

[17] Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905 (1930); Worrell v. Worrell, 174 Va. 11, 4 S.E.2d 343 (1939); Luck v. Luck, 113 W. Va. 17, 166 S.E. 538 (1932).

[18] Teramano v. Teramano, 1 Ohio App. 2d 504, 508-09, 205 N.E.2d 586, 589 (1965).

[19] *Id.* at 508, 205 N.E.2d at 589.