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Liability of Parents for Tort of Child - Rounds, Admr. v. Phillips Et Al. - Kerrigan v. Carroll Et Al.

LIABILITY OF PARENTS FOR TORT OF CHILD

***Rounds, Admr. v. Phillips et al.*[1]**
***Kerrigan v. Carroll et al.*[2]**

In the first principal case the trial court held demurrable the declaration of the plaintiff administratrix, who sought to recover for the pain and suffering of her decedent caused by the tort of the child of the defendants in the negligent driving of an automobile which resulted in the death both of the plaintiff's decedent and of the defendants' said child. On appeal, *Held:* Reversed and new trial awarded. The declaration alleged that the said defendants permitted and failed to prohibit the operation of the automobile by the said child when they knew or should have known that he was negligent, reckless, and incompetent in the operation of automobiles. The Court said that this was sufficient, if proven, to create liability on the part of the parents for their primary negligence, regardless of any theory of imputed negligence, or actual agency, or of the "family car doctrine", the rejection of which, in Maryland, the Court reasserted. The Court held that an automobile is a potentially dangerous, rather than an inherently dangerous instrumentality. The Court relied on the Restatement of the Law of Torts[3] to reach the end of liability. It was held immaterial, as to the father, that the title to the automobile was in the name of the mother, because the father had the power to prohibit the child's use of the automobile.

[27] Staeger v. Comm., *supra*, note 26.

[1] 166 Md. 151, 178 Atl. 532 (1934).
[2] 168 Md. 682, 179 Atl. 53 (1935).
[3] Restatement, Torts, Sec. 390 (was Sec. 260 when cited by the Court).

On the new trial of the first principal case the trial court directed a verdict for the defendants, who appealed from the resulting adverse judgment and it was *Held:* Reversed and new trial awarded. There was sufficient evidence to go to the jury of the parents' knowledge, or possibility of knowledge of the child's recklessness in the operation of automobiles and of the risk of harm to himself and others.[4]

In the second principal case the trial court held demurrable a declaration filed by a domestic servant against two defendants and their child, the third defendant, for that the said child had negligently ignited some gasoline which had been spread on a lawn by one of the parents, which burning gasoline severely burned the plaintiff. On appeal, *Held:* Affirmed. A parent is not ordinarily responsible for the wrongful act of his minor child. To be charged, the parent must induce or approve of the act, or the child must be at the time the servant or agent of the parent.

On a later trial of the second principal case under an amended declaration against the mother and child only, which alleged that the child ignited the gasoline under the orders and direction of the mother, the trial court entered judgment for the plaintiff on a verdict in her favor. On appeal, *Held:* Affirmed. There was sufficient evidence to go to the jury, the prayers challenging the sufficiency of plaintiff's evidence at close of his case were insufficient, when reoffered, to challenge the sufficiency of evidence in the entire case.[5] Beyond this the case, on the second appeal, did not involve any point of the responsibility of parent for the tort of a child.

These two fairly recent cases, each one appealed twice, suggest an inquiry into the bases of holding a parent responsible for the tort of a child. The cases themselves indicate that such responsibility does not follow automatically from the relation of parent and child, but that other factors must be juxtaposed with the relationship to reach the end of liability. As the automobile presents the greater number of such problems, as witness the first principal case, the discussion will be broadened to include the various bases of holding responsible the owner of an automobile for damage caused by another person's operation of it.

Perhaps the most fundamental basis for holding a parent for the tort of a child, or a car owner for the damage caused by another's operation of it, is that of the actual

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[4] Rounds, Admr. v. Phillips, 168 Md. 120, 177 Atl. 174 (1935).
[5] Carroll et al. v. Kerrigen (sic), 197 Atl. 127 (Md. 1938).

agency of the child or driver at the time of the tort.[6] Thus, if the child or driver be engaged in the business of the parent or owner, liability may be imposed. In the second appeal of the second principal case, there was involved a judgment upon such a declaration, which alleged that the child's act was done under the direction of the defendant parent.

Quite a few jurisdictions in this country have adopted the so-called "family car doctrine", which serves to hold liable the responsible head of a family who provides an automobile for the use of the members of his family, when one of them causes damage in the course of such use. Maryland has consistently rejected this doctrine, most recently in the first appeal of the first principal case.[7]

A third view, rejected in Maryland,[8] and, apparently, adopted in only one state,[9] is that of the inherently dangerous instrumentality, which analogizes the automobile to a wild animal and holds the owner responsible just as he would be for damage caused by a wild animal he knowingly let run at large. The analogy would seem inept, for it is unusual to keep an automobile chained up. The first appeal of the first principal case reiterated the rejection of the doctrine.

A fourth view is that of the potentially dangerous instrumentality, which, as applied to an automobile, the Court adopted in the first appeal of the first principal case, where it recognized the automobile as such a potentially dangerous instrumentality and enforced liability against one who knowingly permitted a reckless and incompetent person to operate one. It would be interesting to speculate as to the extent to which the corollary to this is that one who permits a car to be used, knowing that it is in defective condition, will be held responsibile for damages resulting therefrom.[10]

A fifth view is statutory in some states, to hold the owner of a car responsible for damages caused with it by any one who is using it with the owner's permission. Maryland has no such statute. Such statutes are predicated upon assign-

[6] Schneider v. Schneider, 160 Md. 18, 152 Atl. 446, 72 A. L. R. 449 (1930)—(dictum).

[7] See also Myers v. Shipley, 140 Md. 380, 116 Atl. 645 (1922); and Baitary v. Smith, 140 Md. 437, 116 Atl. 651 (1922).

[8] Symington v. Sipes, 121 Md. 313, 88 Atl. 134, 47 L. R. A. (N. S.) 662 (1913).

[9] Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629, 16 A. L. R. 255 (1920); Herr v. Butler et al., 101 Fla. 1125, 132 So. 815 (1931); Engleman v. Traeger, 107 Fla. 756, 136 So. 527; Greene v. Miller et ux, 102 Fla. 767, 136 So. 532 (1931). But see Williams et al. v. Younghusband et al., 57 Fed. (2nd) 139 (C. C. A. 5th Ct. from D. Ct. Fla. 1932).

[10] Foster v. Farra, 117 Ore. 286, 243 Pac. 778 (1926); Texas Co. v. Veloz, 162 S. W. 377 (Tex. Civ. App. 1913).

ing the duty to respond in damages to the person best calculated to be capable to bear that burden—the owner of the car—and upon the idea that providing a car for another's use is, in substance, if not in common law, the proximate cause of the accident.

A sixth source is accidental, rather than legal. Frequently policies of automobile liability insurance are so written as to protect others than the insured, if driving his car with his permission. To the extent which injured persons can force the insurance companies to pay them under such policies, written as guarantees against liability, they provide avenues for collecting from the insured parent or insured car owner, as the case may be.