

WASHINGTON CASE UPDATE

Parent's Negligent Supervision not Tortious, Cannot Reduce Child's Recovery

From the desk of Kyle Riley: Washington's comparative fault scheme permits apportioning fault among all entities who bear a portion of fault, including those that are immune from liability to the claimant. When a child is injured due in part to the negligent supervision of a parent, how does the doctrine of parental immunity interact with the comparative fault scheme? Read on to learn more.

Claims Pointer: In this case arising out of a child's accidental injury, the Washington Supreme Court held that because a parent cannot be liable for a child's injuries based on a theory of negligent supervision, there is no fault to be apportioned to the parent under Washington's comparative fault scheme. The case establishes that parents whose negligent supervision caused a child's injury are not immune from fault under the doctrine of parental immunity; rather, their conduct is simply not tortious, so there is no fault to be apportioned. This is an important consideration in all claims involving a child's injury that was caused in part by a parent's negligent supervision.

Smelser v. Paul, No. 9307-6-7, Washington Supreme Court (July 6, 2017)

When Derrick Smelser ("Derrick") was two years old, he was playing in his father's driveway while his father's then-girlfriend, Jeanne Paul ("Paul"), was visiting. Paul's truck was parked in the driveway. When she started to drive away, she hit Derrick and pulled him under the vehicle, dragging him for some distance and causing severe injuries. Derrick's older brother, Dillon Smelser ("Dillon"), witnessed the accident, and when the boys' father, Ronald Smelser ("Ronald"), heard Dillon screaming, he looked in that direction and saw Derrick under Paul's truck.

Derrick's guardian brought suit on behalf of Derrick against Paul, alleging negligence. Paul admitted the basic facts of the accident, but she asserted as an affirmative defense that Ronald was either partially or entirely responsible for the injuries due to negligent supervision. Derrick moved for summary judgment, arguing that no fault was apportionable to the father as a matter of law. The trial court denied summary judgment, and Derrick amended his complaint to include Ronald as a defendant. The amended complaint did not allege that Ronald was negligent or otherwise at fault; rather, it merely stated that Paul contended that Ronald was "concurrently negligent and/or engaged in willful misconduct which was a proximate cause of Plaintiff's injuries." Ronald

never appeared as a defendant, and the court entered an order of default against him.

The case proceeded to trial, and the jury found that both Paul and Ronald were negligent and proximately caused Derrick's injuries. On a special verdict form, the jury attributed 50 percent of the damages to Paul and 50 percent to Ronald. Paul proposed the court enter a judgment against her only for the 50 percent of damages apportioned to her by the jury. Derrick objected and proposed that a "joint and several" judgment be entered against both Paul and Ronald for the entire amount of damages. Paul argued that a judgment could not be entered against Ronald due to parental immunity. The court entered judgment as proposed by Paul for 50 percent of the damages found by the jury. No judgment was entered against Ronald. Derrick appealed, and the Washington Court of Appeals affirmed. Derrick appealed to the Washington Supreme Court.

The Supreme Court framed the issue before it as whether the parental immunity doctrine permits a parent to be assigned fault under Washington's comparative negligence statutory scheme based on negligent supervision. Under Washington's scheme, where a case involves a fault-free plaintiff, joint and several liability remains the rule. The fault apportioning scheme requires that all tortfeasors responsible to the injured plaintiff

case in point...



Contact: Kyle Riley | www.smithfreed.com | email: kdr@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

WASHINGTON CASE UPDATE

Parent's Negligent Supervision not Tortious, Cannot Reduce Child's Recovery

case in point...

are identified and assigned a portion of fault. The language of the central statute states that, along with other entities, "[t]he entities whose fault shall be determined include...entities immune from liability to the claimant." RCW 4.22.070 (emphasis added). This language led the trial court to allow the jury to apportion fault to the father and the Court of Appeals to affirm the trial court.

The Supreme Court, however, noted that before applying the language of the statute, it must first determine whether a tort duty exists from which fault can be found for negligent parenting. The Supreme Court explained that while prior cases discuss the doctrine of "parental immunity," what they actually establish is that no tort liability or tort duty is actionable against a parent for negligent supervision. In this way, the Court clarified, so-called parental "immunity" is related to discretionary governmental immunity in that just as it is not a tort for government to govern, it is not a tort to be a bad or neglectful parent. And where no tort exists, no legal duty can be breached, and no fault can be attributed or apportioned under RCW 4.22.070.

The Court also pointed to the definition of "fault" found in a related statute. Under RCW 4.22.015, an "at fault" entity is one whose negligent or reckless conduct breached some recognized duty. As the Court explained, the trier of fact cannot apportion fault to individuals whose actions fall outside the legal definition of negligence or recklessness. Accordingly, because a parent owes no duty based on negligent supervision, there is no actionable "fault" that would bring the parent within the scope of Washington's comparative fault scheme, regardless of whether it is the child or someone else who seeks to blame the parent.

As a final point, the Court noted that no party disputed that two-year-old Derrick was fault-free, but his recovery was still reduced based on the negligence of the father. This result

conflicted with another related statute that provides that "the contributory fault of one spouse or one domestic partner shall not be imputed to...the minor child of the spouse of domestic partner to diminish recovery." RCW 4.22.020.

The court explained that a determination of fault must precede any analysis of immunity, and a parent cannot be liable for a child's injuries based on a theory of negligent supervision. While this is referred to as parental "immunity," the doctrine actually establishes that the conduct is simply not tortious. Thus, there is no fault to be apportioned under RCW 4.22.070. Accordingly, the trial court was reversed, and the case was remanded with instructions to enter judgment against Paul for the entire amount of Derrick's damages found by the jury.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/930767.pdf>

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



Contact: Kyle Riley | www.smithfreed.com | email: kdr@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.