

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: First District Court of Appeals

Case Name: Campbell v. Sharpe

Decided: June 27, 2008

Issue(s): Parental Liability for Their Child's Torts

Summary of Opinion: Plaintiff Shannon Campbell was injured when 6 year old Nathan Sharp lost control of his bicycle and ran into her at a city park. Nathan's parents testified that their son had been riding his bike regularly and had never seen him crash into anyone. Nathan had been riding a bike for two years, and his parents believed he was able to control his bike. The Campbells sued Nathan's parents for negligence, but the trial court granted summary judgment and dismissed the case.

On appeal, the First District held that the trial court's grant of summary judgment was proper. "A child under the age of seven is incapable of negligence as a matter of law." A parent can be held liable, however, if the injury is a foreseeable consequence of a parent's negligent act. In those circumstances, it is the parent's conduct—not the conduct of the child—that creates liability. Ohio courts have held that parental negligence can result in liability in three circumstances:

- 1) negligent entrustment of a an instrumentality which, because of the child's immaturity or lack of experience may become a source of danger;
- 2) failure to exercise reasonable control over the child when the parent knows, or should know, that injury to another is probable; or
- 3) consenting, sanctioning, or directing a child's wrongdoing.

Plaintiff proceeded under the second circumstance. The Court held that Plaintiffs could

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not show that Nathan's parents were able to reasonably foresee the accident. To establish foreseeability, Plaintiffs had to provide evidence that "specific instances of prior conduct [were] sufficient to put a reasonable person on notice that the act complained of is likely to occur." Here, there is no evidence that his parents believed, or should have believed, that Nathan may have lost control of his bike.

Interestingly, Appellate Judge Mark Painter wrote a dissent. He suggested that the Ohio legislature should re-write the law on parental liability, and he pointed out that Ms. Campbell was no less injured simply because a child hit her. Had an adult hit her, he noted, liability would be clear. He finished his dissent with this rhetorical question and comment:

"Why is it fair that Campbell's serious injuries go uncompensated, given that the parent's homeowners' insurance would have paid the damages? Whoops. I answered my own question."

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