

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: Supreme Court of Ohio

Case Name: Barnes v. University Hospitals of Cleveland

Decided: July 8, 2008

Issue(s): Supreme Court Adopts New Punitive Damages Rule

Summary of Opinion: This case involved an action for medical malpractice and wrongful death. The jury awarded damages of \$4,000,000 and punitive damages of \$3,000,000.

The Defendant argued that the punitive damages imposed by the jury were grossly excessive and unconstitutional. Defendant requested that Ohio adopt the standard for reviewing punitive damages set forth by the U.S. Supreme Court in *BMW of North America, Inc. v. Gore* (1996), 517 U.S. 559. The Ohio Supreme Court formally adopted the test set forth in *Gore*, and it mandates that it be used in all future reviews of punitive damage awards.

Gore set forth three guideposts to use in evaluating whether a punitive damage award is grossly excessive and therefore unconstitutional:

- (1) The degree of reprehensibility of the defendant's misconduct;
- (2) The disparities between the harm or potential harm suffered by the plaintiff and the punitive damages award, and
- (3) The difference between the award and the civil penalties authorized or imposed in comparable cases.

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The Court held that the principles set forth in *Gore* must be implemented with care to ensure both reasonableness and proportionality. The Ohio Supreme Court reversed the decision of the Eight District Court of Appeals because it failed to apply the *Gore* guideposts.

Court of Appeals: Eleventh District Court of Appeals

Case Name: Frederick v. Willoughby

Decided: July 2, 2008

Issue(s): Parental liability for actions of a mentally challenged adult child.

Summary of Opinion: Buddy Willoughby was an adult male who lived with his parents. As a child, Buddy suffered a head trauma which resulted in disability. Buddy was described as slow or incompetent, and he attended special education classes in primary school. Buddy had several criminal convictions against him as an adult, including gross sexual imposition, domestic violence, and impersonating a police officer.

In 2001, Plaintiff Frederick moved into a residence next door to the Willoughbys. While Frederick was in the process of moving into the residence, she found Buddy in her house masturbating with a pair of her underwear. When Frederick informed Buddy's parents of this incident, they hit Buddy and told her that they do not let Buddy do those things and that she should let them know if there were any other incidents. In 2004, Frederick was sleeping in her bedroom when she awoke to find Buddy touching her genitals while masturbating himself. When she screamed, Buddy left, and Frederick called the police. At the criminal trial, Buddy was charged with rape, but was found incompetent to stand trial and was committed to a residential mental health facility.

Both Frederick and her daughter suffered emotional problems as the result of Buddy's actions. They brought suit against the Willoughbys for negligent supervision, negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and failure to warn. The primary question on summary judgment was whether Mr. and Mrs. Willoughby had a duty to Frederick to protect her from Buddy. In Ohio, "the existence of a duty depends on the foreseeability of the injury," and "there is no duty under Ohio law to control the conduct of another person so as to prevent him from causing physical harm to another unless a 'special relation' exists between the actor and that person which imposes a duty upon the actor to control the person's conduct."

The Eleventh District Court of Appeals held that "one who takes charge of a third-person who he knows or should know to be likely to cause bodily harm to others if not

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controlled is under a duty to exercise reasonable care to control the third-person to prevent him from doing such harm.” The Court held that the evidence showed that:

- (1) Mr. and Mrs. Willoughby were aware of Buddy’s sexually deviant conduct, dangerous and violent propensities, and mental incapacity;
- (2) The evidence showed that Mr. and Mrs. Willoughby attempted to control Buddy’s behavior by restricting his ability to leave the property and disciplining him shows that they took charge of Buddy and accepted responsibility for him; and
- (3) The Willoughbys knew about Buddy’s behavior and they attempted to control his behavior.

The Court of Appeals held that Frederick produced sufficient evidence to show that the Willoughby’s negligently failed to control Buddy’s behavior. The Court held that the evidence showed that the Willoughby’s actually assumed the care and control of their son, a person they knew to be dangerous.

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