

Student Handout – Intentional Torts

Helen FRIEDRICH v. Peter W. ADESMAN; Robin H. Adesman, aka Robin H. Miller; Brian Adesman and David Adesman.

Case Facts

While in the kitchen, the nanny observed the children (aged 5 and 6) allow water to be spilled from the cold-water dispenser on the outside door of refrigerator in their home. The water spilled due to the children's willful, reckless and boisterous activities, which included banging the refrigerator and otherwise misusing the cold-water dispenser. The nanny dried the water spill completely, and admonished the children not to misuse the refrigerator again. The nanny then proceeded to the bathroom and shortly thereafter returned to the kitchen. As she proceeded toward the kitchen sink, she was distracted by the children, who were then seated at a table and were arguing and throwing food. As she continued to proceed toward the sink, she slipped and fell in front of the refrigerator on ice that had not been present when she dried the water spill. The ice had been dropped on the floor by the children while the nanny was out of the room, despite her admonitions to the minor children against misusing the refrigerator.

Questions:

Who is the plaintiff?

Who is the defendant?

Duty?

If so, describe the duty owed to each party involved.

Has a tort occurred?

If so, which type of tort action has occurred? Ex. Assault, Battery.

Will the plaintiff be able to recover?

Are there any limitations?

Are there possible defenses?

Are there any other claims that can be presented?

Teacher Handout

Facts

- This case is about a nanny, employed by defendants, who alleged that while caring for their five and six year old children, she was injured. The nanny was allegedly injured when she slipped and fell on ice that was on floor. She claimed that the ice was on the floor as direct result of the children's misuse of the refrigerator. Defendants were not present at the time.

Issues

- The nanny brought actions against the parents under many different theories. The main issue involving tort law centered around allegations that the children intentionally caused injury to nanny and that ice was on the floor as result of children's "willful activities."
- The case was dismissed by Circuit Court for failure to state facts sufficient to constitute a claim. The trial court basically said that the facts presented were lacking enough information to find the defendant liable for their children's actions. The nanny appealed.

Court of Appeals

- The Court of Appeals held that: (1) nanny did not state claim for failure to exercise reasonable control over children, failure to provide safe workplace, or premises liability, but (2) nanny did state claim for battery for which parents could be held liable under statute.

Nanny's Arguments on Appeal: 1st claim

- "Defendants knew or should have known that the minor children would misuse the refrigerator, but [they] took no steps to control such use or instruct the children regarding proper use and safety measures, and negligently entrusted the minor children to such use.
- The court held: Regarding a claim for the failure to exercise reasonable control over a minor child, the failure of the complaint to allege that the defendants had knowledge of their ability to control their child and the opportunity to exercise that control was fatal to the plaintiff's claim. Plaintiff's claim suffers from the same defect. It alleges that defendants were not present when the ice was left on the floor, and there is no allegation that they had the opportunity to control their children in regard to the conduct that is the basis for plaintiff's claim of liability. The trial court did not err in granting defendants' motion as to the first claim.

Nanny's Arguments on Appeal: 2nd claim

- In this claim, plaintiff again incorporates the allegations in her first claim and also alleges, "[defendants'] minor children recklessly or intentionally caused the ice to fall to the floor and to remain on the kitchen floor, and recklessly or intentionally caused injury to plaintiff." Plaintiff argues that she has alleged that a battery was committed by the children and that, under the statute, defendants are liable for their tort. "To constitute liability for a battery, the conduct which brings about the harm must be an

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act of volition on the actor's part, and the actor must have intended to bring about a harmful or offensive contact

- The defendants argue that the complaint alleges only that the children intentionally caused the ice to fall on the floor and that there is no allegation that they intended the ice to cause plaintiff to fall. Defendants' argument ignores the allegation that the children "intentionally caused injury to plaintiff." When that allegation is read with the allegation that the presence of the ice on the floor was the result of "the willful activities" of the children, it could be inferred that the children acted volitionally to place the ice on the floor with the intent to cause plaintiff to fall. Those allegations suffice to allege a claim of battery for which defendants could be held liable under the statute. The trial court erred in dismissing the fourth.

Outcome

- The nanny was able to recover damages, though minimal compared to the amount she requested.
- Under the statute, a parent's liability is limited to \$7,500.
 - "In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally or recklessly committed by such child."