

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Court Narrows Who May Be Identified As Non-Parties At Fault

By Joseph Pittel

In *Slager v Kid's Kourt*, _ Mich App _ (2010), the Court of Appeals clarified who can be a non-party at fault in a negligence case. The Court held that only those whose actions are the factual and proximate cause of an injury are eligible.

In *Slager*, Plaintiff's minor was injured at his daycare facility when his finger was crushed by a metal paper holder. Defendants moved for delayed leave to identify the minor's parents as non-parties at fault. Defendants argued that the parents' failure to take their son to physical therapy contributed to his damages. The trial court ruled Plaintiff's parents could not be named as non-parties at fault because they were immune from suit under parental immunity. On appeal, the appellate court ignored this reasoning but affirmed on other grounds. The Court of Appeals found that Defendants' motion was properly denied because Michigan's comparative negligence statutes were inapplicable.

The Court of Appeals began its opinion with a discussion of joint and several liability. Before "Tort Reform," separate tortfeasors could be found liable where their actions produced a single, indivisible injury. Comparative negligence statutes were specifically designed to abolish this type of joint and several liability.

In this case, the parties agreed that Plaintiff's parents did not cause his daycare injury. Defendants argued, however, that the parents' failure to follow the doctor's post-surgery advice hampered the child's recovery and increased his damages. The Court reasoned that, even if this were true, Plaintiff's parents could not be considered jointly or severally liable because they had no part *in the injury*. Thus, Michigan's comparative negligence statutes did not apply.

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The Court was careful to distinguish between "an injury" and "damages," noting that they are related but distinct concepts. The Court stated that, before considering Plaintiff's *damages*, a court must first determine whether Defendants' actions constituted the proximate cause of an identifiable *injury*.

In analyzing a claim, it is important to determine if a potential non-party at fault actually contributed to the injury, or simply contributed to a subsequent injury or impeded recovery. The former is a proper non-party at fault, the latter is not.

Of note: Although refusing to permit Defendants to name the parents as a non-party at fault, the Court recognized that some of Plaintiff's damages might not have been proximately caused by Defendants. In its closing, the Court reminded the parties that Plaintiff must prove that any claimed damages were caused solely by Defendants' negligence.

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The Court tested this theory by examining the language of Michigan's comparative negligence statutes (MCL 600.2957 and MCL 600.6304). After review, the Court held that these statutes "do not direct a trier of fact to consider damages unrelated to conduct that produced or caused the underlying injury." The Court further held that comparative fault statutes are "inapplicable with respect to fact patterns entailing multiple torts separated in time, multiple torts separated by individual causal chains, and multiple torts which did not produce a single, indivisible injury." Having played no part in the injury, Plaintiff's parents could not be identified as possible non-parties at fault. Any negligent conduct by the parents subsequent to the injury constituted a separate tort with its own damages.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Premises Liability Practice Group Co-Chair

Caroline Grech-Clapper

Editor

Bonny Craft

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