

NEGLIGENCE ISSUE--BREACH OF PARENT'S DUTY TO SUPERVISE MINOR CHILDREN.<sup>1</sup>

This issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant parent(s) in failing to control or supervise the behavior of [his] [their] child?"

Negligence refers to a party's conduct. Negligence is a lack of ordinary care. The law imposes a duty upon every parent to use ordinary care to control or supervise the behavior of his minor child which he knows or should know is dangerous so as to protect others from injury. A breach of that duty is called negligence. Ordinary care means that degree of care which a reasonable and prudent parent would use under the same or similar circumstances.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, five things:

First, that the child engaged in behavior which caused [injury] [damage] to the plaintiff.

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<sup>1</sup>Moore v. Crumpton, 306 N.C. 618, 295 S.E.2d 436 (1982); Anderson v. Butler, 284 N.C. 723, 202 S.E.2d 585 (1974); Lane v. Chatham, 251 N.C. 400, 111 S.E.2d 598 (1959); McMillan v. Mahoney, 99 N.C. App. 448, 393 S.E.2d 298 (1990); and Patterson v. Weatherspoon, 29 N.C. App. 711, 225 S.E.2d 634, disc. rev. denied, 290 N.C. 662, 228 S.E.2d 453 (1976). There may be instances where there will be no issue presented concerning the child's negligence. For example, children under the age of seven are incapable of negligence as a matter of law. Walton v. Greene, 247 N.C. 693, 102 S.E.2d 124 (1958). Between the ages of seven and fourteen, a child is not held to an adult standard of care. The child must use care and prudence equal to his capacity. Weeks v. Barnard, 265 N.C. 339, 143 S.E.2d 809 (1965) and N.C.P.I.--Civil 102.31 ("Negligence of a Minor Between Seven and Fourteen Years of Age"). The fact that the child may be incapable of negligence does not necessarily absolve a parent from responsibility for failing to intercept dangerous behavior if there is a reasonable opportunity to do so. Where the parent encourages assists or participates in the child's negligent conduct, joint negligence may be involved. See N.C.P.I.--Civil 102.90 ("Negligence Issue--Joint Conduct--Multiple Tortfeasors").

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Second, that the defendant parent(s) knew or, in the exercise of ordinary care, should have known that [*his*] [*their*] child [had previously engaged] [was engaging] [had the propensity to engage] in such behavior, and that such behavior was reasonably likely to endanger another.<sup>2</sup>

Third, that the defendant parent(s) had an opportunity or ability to control or supervise that behavior of the child,<sup>3</sup>

Fourth, that, in the exercise of ordinary care under the same or similar circumstances, a reasonable parent would have exercised sufficient control or supervision over the child so as to stop or prevent that behavior,<sup>4</sup> and

Fifth, that the defendant parent(s) failed to exercise sufficient control or supervision over that behavior of the child, and that such failure was a proximate cause of the [injury] [damage] suffered by the plaintiff.<sup>5</sup>

Proximate cause is a real cause--a cause without which the claimed [injury] [damage] would not have occurred, and one which a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the negligence of the defendant

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<sup>2</sup>Moore, supra, 306 N.C. at 624, 295 S.E.2d at 440; Lane, supra, 251 N.C. at 405, 111 S.E.2d at 603; McMillan, supra, 99 N.C. App. at 454-455, 393 S.E.2d at 302.

<sup>3</sup>Moore, supra, 306 N.C. at 623, 295 S.E.2d at 440; Anderson, supra, 284 N.C. at 730, 202 S.E.2d at 589.

<sup>4</sup>Lane, supra, 251 N.C. at 405, 111 S.E.2d at 603.

<sup>5</sup>Id., 251 N.C. at 402, 111 S.E.2d at 601; McMillan, supra, 99 N.C. App. at 455, 393 S.E.2d at 302-303.

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parent(s) was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the negligence of the defendant parent(s) was a proximate cause.

In this case, the plaintiff contends, and the defendant parent(s) [denies] [deny], that the defendant parent(s) [was] [were] negligent in one or more of the following ways:

*(Read all contentions of negligence supported by the evidence.)*

The plaintiff further contends, and the defendant parent(s) [denies] [deny], that the defendant parent('s)(s') negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant parent(s) [was] [were] negligent in failing to control or supervise the behavior of [his] [their] child, and that such negligence was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant parent(s).

