

Jim's Perspective...

Parental Immunity Doctrine

On January 21, 2017, Catarina Nolasco was operating a motor vehicle on the interstate near Wood River, Nebraska, when the vehicle left the roadway and entered the ditch, rolling several times. Nolasco's unemancipated minor children were riding in the vehicle with her at the time. Her son was seriously injured and her daughter died from injuries sustained in the accident. Nolasco also died as a result of the accident.

The son filed a negligence action against Nolasco's estate and the daughter's estate filed a wrongful death action against Nolasco's estate. Both of these cases alleged Nolasco was negligent in the operation of the vehicle. The trial court granted summary judgment in favor of the Nolasco estate and dismissed the two actions. The issue before the trial court was whether the children's claims against their mother were barred based upon the parental immunity doctrine. The trial court acknowledged the request of the two plaintiffs that the court should abrogate or limit application of the parental immunity doctrine, but the trial court refused to do so, reasoning that any limitation of this judicially created doctrine must come from the Nebraska Supreme Court.

The parental immunity doctrine is one part of a larger historic civil tort limitation on litigation referred to as the intrafamily immunity doctrine. The intrafamily immunity doctrine includes both the parental immunity doctrine and the interspousal immunity doctrine. The interspousal immunity doctrine is based upon English Common Law and was adopted by statute in Nebraska law many years ago. Interspousal immunity was eliminated by the Nebraska Supreme Court in 1979.¹ The parental immunity doctrine did not originate in English common law, but instead was first adopted in an 1891 Mississippi case. As the years went by, more and more states adopted this doctrine. Common justifications for the parental immunity doctrine included (1) maintaining family harmony; (2) preserving parental autonomy and authority over the discipline and care of children; (3) preventing fraud and collusion between family members; and (4) protecting family assets from depletion in favor on one child at the expense of others.

The parental immunity doctrine, as it has been articulated in Nebraska Supreme Court opinions prior to Nolasco, provides generally that an unemancipated minor child cannot maintain an action against his or her parents to recover damages for ordinary negligence, but can maintain an action for "brutal, cruel, or inhuman treatment." The Nebraska courts have described this as a "modified version" of the parental immunity doctrine. Nebraska adopted this doctrine in the case of Pullen v. Novak, 169 Neb. 211, 99 N.W.2d 16 (1959).

Recently, the Nebraska Supreme Court issued an opinion in Nolasco v. Malcom, 307 Neb. 309 (2020) in which the court reversed the summary judgment order of the District Court (as noted above) and said that no Nebraska Supreme Court case has ever adopted or approved of application of the parental immunity doctrine in an automobile negligence case. The Court in Nolasco declined to apply or extend the parental immunity doctrine to the negligence claims of the Nolasco children thereby limiting application of the parental immunity doctrine to claims involving parental authority, discretion, or decision making in the supervision, care, and treatment of a minor child.

¹Imig v. March, 203 Neb. 537, 279 N.W.2d 382 (1979)

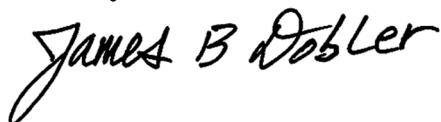
Thus, in Nolasco, the negligence claims of the minor children, arising from the negligent operation of a vehicle by their mother, may proceed to trial in the Dawson County District Court of Nebraska.

This opinion came as a surprise to me. I was not at all surprised at the holding or outcome of Nolasco, but was surprised that the parental immunity doctrine was even brought up as a defense to the negligence claims of the children. I knew interspousal immunity was gone and, therefore, I guess I just figured parental immunity would no longer be an issue in auto negligence claims asserted by minor children against parents. Maybe part of why I thought this is that the Nebraska guest statute already barred the auto claims of children riding as passengers in their parents' car. Until repeal of the Guest Statute in 2010, auto negligence claims of children against a parent were simply not an issue, so I guess I didn't think much about the parental immunity doctrine. I do remember some minor children negligence claims against parents involving farm accidents and these were settled or tried in court and there was never any argument raised about the parental immunity doctrine.

Over the last roughly 40 years we have seen a significant expansion of civil tort law in Nebraska and potential liability insurance benefits. It includes:

- Abrogation of interspousal immunity in 1979.
- Repeal of slight/gross comparative negligence in the early 1990's, and adoption of modified comparative negligence in which a claimant can recover tort damages if his or her negligence is less than 50%.
- Elimination of the household exclusion in personal lines auto policy in 1995 by the Nebraska Legislature. As I recall, this legislative elimination of household exclusions was prompted by a serious auto accident south of Lincoln involving two automobiles from the same farm family that had a head-on collision at the top of a county gravel road. Newspapers and the general public were shocked to learn that no one could recover auto liability benefits due to the household exclusion.
- Repeal of the guest statute in 2010.
- Rejection of application of the parental liability doctrine in auto negligence claims made by children.

Imagine what personal lines liability insurance rates might be if none of the above changes had ever taken effect. This is not to suggest that the above changes in Nebraska were a bad thing. I think all of the items listed above were good for Nebraska. Adoption of parental immunity in the late 1800's no doubt seemed like an appropriate limitation on civil tort law at that time. However, after World War II and the emergence of the automobile as the primary mode of transportation for most families, the inevitable surge in auto bodily injury accidents nudged the courts towards adopting an automobile exception to the parental liability doctrine and this eventually lead to complete abrogation of this doctrine. In many ways, the law is simply a reflection of the constant evolution of society's norms and values.



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