

SUPREME COURT OF VIRGINIA

Kellermann v. McDonough

679 S.E.2d 203 (Va. 2009) · No. Record No. 081718 · Decided July 17, 2009

SUMMARY

The Supreme Court of Virginia held that when a parent relinquishes supervision and care of a child to an adult who agrees to assume that responsibility, the adult owes a common-law duty to exercise reasonable care, though the adult is not an insurer of the child's safety. The Court also recognized an assumption-of-duty claim against Paula McDonough, but not against Paul McDonough, and held that the alleged conduct of the teenage driver was not necessarily a superseding cause as a matter of law. The judgment was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Chief Justice Leroy R. Hassell, Sr.; Justice Lawrence L. Koontz, Jr.; Justice Barbara Milano Keenan; Justice Elizabeth A. McClanahan; Justice Donald W. Lemons; Justice William C. Mims; Justice G. Steven Agee
JURISDICTION	Virginia
DECIDED	July 17, 2009
DOCKET	Record No. 081718
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Henrico County sustaining the defendants' demurrer and dismissing a wrongful-death negligence complaint.
STANDARD OF REVIEW	A demurrer tests whether the complaint states a cause of action; properly pleaded material facts and reasonable factual inferences are admitted, while legal conclusions are not. The existence of a legal duty is reviewed as a question of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential state appellate authority.
PARTIES	Michael H. Kellermann, Administrator of the Estate of Jaimee Elizabeth Kellermann v. Paul McDonough, Paula McDonough

TOPICS

wrongful death duty of care negligence proximate cause motions to dismiss

PRACTICE AREAS

torts personal injury wrongful death civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether an adult who agrees to supervise and care for a child after the child's parent relinquishes supervision owes the child a common-law duty to exercise reasonable care.
2. Whether Paula McDonough's agreement to comply with the parent's specific transportation instruction stated a claim based on assumption of duty.
3. Whether Paul McDonough could be liable under an assumption-of-duty theory despite not being present when Paula made the undertaking.
4. Whether a special relationship imposed on the McDonoughs a duty to protect Jaimee from the criminal or wrongful acts of a third party.
5. Whether the driver's conduct was, as a matter of law, the sole proximate cause of Jaimee's death.
6. Whether Kellermann preserved his common-law-duty argument for appellate review.

HOLDINGS

1. When a parent relinquishes supervision and care of a child to an adult who agrees to supervise and care for the child, the adult must exercise the care that a reasonably prudent person would exercise under similar circumstances, although the adult is not an insurer of the child's safety.
2. The complaint stated a cognizable tort claim against Paula McDonough because her agreement to comply with the specific instruction that Jaimee not ride with inexperienced or young male drivers constituted an undertaking to exercise reasonable care in performing that undertaking.
3. The complaint failed to state an assumption-of-duty claim against Paul McDonough because it contained no allegations that he affirmatively undertook a duty to protect Jaimee from inexperienced or young male drivers.
4. The McDonoughs did not have a special relationship with Jaimee that imposed a duty to protect her from the criminal or wrongful acts of third parties.
5. The driver's conduct was not, as a matter of law, a superseding cause that barred liability; a jury could find that the McDonoughs' alleged negligence was also a proximate cause of Jaimee's death.
6. Kellermann preserved his argument that the McDonoughs owed a common-law duty of care because he raised the issue in the circuit court and did not abandon it.

KEY QUOTATIONS

"We hold that when a parent relinquishes the supervision and care of a child to an adult who agrees to supervise and care for that child, the supervising adult must discharge that duty with reasonable care." (207)

“However, such adult who agrees to supervise and care for a child upon the relinquishment of that care and supervision by the child's parent is not an insurer of the child's safety.” (207)

“It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all.” (208)

“not every intervening cause is a superseding cause.” (211)

FACTUAL BACKGROUND

The McDonoughs invited fourteen-year-old Jaimee Kellermann to stay overnight with their daughter. Jaimee's father expressly instructed Paula McDonough that Jaimee was not to ride with inexperienced drivers or young male drivers, and Paula agreed to take care of her. Despite that instruction, Paula allegedly permitted Jaimee and two other girls to ride home with a seventeen-year-old boy known for reckless driving; he drove at speeds approaching or exceeding eighty miles per hour, lost control, and struck a tree, causing Jaimee's death.

PROCEDURAL HISTORY

Kellermann filed a wrongful-death action alleging that Paul and Paula McDonough negligently supervised and cared for his fourteen-year-old daughter, Jaimee, and that Paula breached an assumed duty by permitting Jaimee to ride with an inexperienced young male driver. The circuit court initially overruled the demurrer but later sustained it and dismissed the complaint. The Supreme Court of Virginia held that the complaint stated a negligence claim based on a common-law duty to supervise and care for a child, stated an assumption-of-duty claim against Paula but not Paul, rejected the special-relationship theory, and remanded for trial on the viable claims.

DISPOSITION

other

REMAND INSTRUCTIONS

Remanded to the circuit court for trial on Kellermann's claims that Paula McDonough assumed a duty to Jaimee and that both Paul and Paula McDonough breached a common-law tort duty of supervision and care. The assumption-of-duty claim against Paul McDonough and the special-relationship theory were not viable.

CASES CITED

- Tronfeld v. Nationwide Mutual Ins. Co., 272 Va. 709, 636 S.E.2d 447 (2006)
- Dodge v. Randolph-Macon Woman's College, 276 Va. 1, 661 S.E.2d 801 (2008)
- Delk v. Columbia/HCA Healthcare Corp., 259 Va. 125, 523 S.E.2d 826 (2000)
- Yuzefovsky v. St. John's Wood Apartments, 261 Va. 97, 540 S.E.2d 134 (2001)
- Didato v. Strehler, 262 Va. 617, 554 S.E.2d 42 (2001)
- Nolde Bros. v. Wray, 221 Va. 25, 266 S.E.2d 882 (1980)
- Fruiterman v. Granata, 276 Va. 629, 668 S.E.2d 127 (2008)

- *Taboada v. Daly Seven, Inc.*, 271 Va. 313, 626 S.E.2d 428 (2006)
- *A.H. v. Rockingham Publishing Co.*, 255 Va. 216, 495 S.E.2d 482 (1998)
- *Burdette v. Marks*, 244 Va. 309, 421 S.E.2d 419 (1992)
- *Dudas v. Glenwood Golf Club, Inc.*, 261 Va. 133, 540 S.E.2d 129 (2001)
- *Estate of Moses ex rel. Moses v. Southwestern Virginia Transit Management Co.*, 273 Va. 672, 643 S.E.2d 156 (2007)
- *Atkinson v. Scheer*, 256 Va. 448, 508 S.E.2d 68 (1998)
- *Williams v. Le*, 276 Va. 161, 662 S.E.2d 73 (2008)
- *McDonald v. Commonwealth*, 274 Va. 249, 645 S.E.2d 918 (2007)

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