

SUPREME COURT OF NEBRASKA

Nolasco v. Malcom

307 Neb. 309 (2020) · No. Nos. S-19-729, S-19-730 · Decided September 25, 2020

SUMMARY

The Nebraska Supreme Court considered whether Nebraska's modified parental immunity doctrine barred automobile negligence claims brought by children or their estates against a deceased parent's estate. The court held that the claims fell outside the doctrine because automobile operation did not involve parental authority, discretion, or decisionmaking in the supervision, care, or treatment of a minor child. The court reversed the district court's summary judgments and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 25, 2020
DOCKET	Nos. S-19-729, S-19-730
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from summary judgments entered by the Dawson County District Court dismissing automobile negligence actions under Nebraska's parental immunity doctrine. The Nebraska Supreme Court granted petitions to bypass and reversed and remanded.
STANDARD OF REVIEW	The scope of a judicially created immunity rule, including whether it should be limited or extended, is a question of law reviewed independently. To the extent an appeal presents questions of law, the appellate court reaches an independent conclusion irrespective of the lower court's determination.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Gaspar Nolasco, personal representative of the Estate of Maria E. Nolasco, deceased, Gaspariny Nolasco v. Brennon Malcom, special administrator of the Estate of Catarina A. Nolasco, deceased

TOPICS

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QUESTIONS PRESENTED

1. Whether Nebraska's modified parental immunity doctrine bars negligence claims by unemancipated children arising from a parent's allegedly negligent operation of an automobile.
2. Whether the district court erred in granting summary judgment and dismissing the automobile negligence actions on the basis of parental immunity.

HOLDINGS

1. Nebraska's modified parental immunity doctrine is confined to ordinary negligence claims involving conduct related to parental authority, discretion, or decisionmaking in the supervision, care, and treatment of a minor child.
2. Automobile negligence claims alleging unreasonable speed, failure to maintain a proper lookout, and failure to maintain proper control of a vehicle do not fall within Nebraska's modified parental immunity doctrine because they do not involve the exercise of parental authority, discretion, or decisionmaking regarding the supervision, care, or treatment of a minor child.

KEY QUOTATIONS

“the doctrine, as adopted and applied in Nebraska by this court, has always been confined to that class of ordinary negligence claims involving conduct related to parental authority, discretion, or decisionmaking in the supervision, care, and treatment of a minor child.” (307 Neb. at 327-28)

“Because none of this alleged conduct pertains in any respect to the exercise of parental authority, discretion, or decisionmaking in the supervision, care, and treatment of a minor child, the claim falls outside the scope of Nebraska’s modified parental immunity doctrine.” (307 Neb. at 328-29)

FACTUAL BACKGROUND

On January 21, 2017, Catarina A. Nolasco was driving on an interstate near Wood River, Nebraska, when her vehicle left the roadway and rolled several times. Her unemancipated minor son was seriously injured, her daughter died, and Nolasco also died. The claims alleged that Nolasco negligently operated the vehicle by failing to maintain a proper lookout, driving at an unreasonable speed, and failing to maintain proper control.

PROCEDURAL HISTORY

The Estate of Maria E. Nolasco brought a wrongful death and survival action against the Estate of Catarina A. Nolasco, and Gaspariny Nolasco brought a separate negligence action for injuries arising from an automobile accident. The district court granted the defendant estate summary judgment, concluding that parental immunity

barred both claims. The plaintiffs timely appealed, and the Nebraska Supreme Court granted petitions to bypass and consolidated the appeals.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The causes are remanded to the Dawson County District Court for further proceedings consistent with the opinion.

CASES CITED

- Pullen v. Novak, 169 Neb. 211, 99 N.W.2d 16 (1959)
- Wood v. McGrath, North, 256 Neb. 109, 589 N.W.2d 103 (1999)
- In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018)
- Hewlett v. Ragsdale, 68 Miss. 703, 9 So. 885 (1891)
- Goller v. White, 20 Wis. 2d 402, 122 N.W.2d 193 (1963)
- Nelson v. Johansen, 18 Neb. 180, 24 N.W. 730 (1885)
- Clasen v. Pruhs, 69 Neb. 278, 95 N.W. 640 (1903)
- Fisher v. State, 154 Neb. 166, 47 N.W.2d 349 (1951)
- Frey v. Blanket Corp., 255 Neb. 100, 582 N.W.2d 336 (1998)
- Richards v. Meeske, 268 Neb. 901, 689 N.W.2d 337 (2004)
- Glaskox by and through Denton v. Glaskox, 614 So. 2d 906 (Miss. 1992)
- Cates v. Cates, 156 Ill. 2d 76, 619 N.E.2d 715, 189 Ill. Dec. 14 (1993)
- Winn v. Gilroy, 296 Or. 718, 681 P.2d 776 (1984)
- Dellapenta v. Dellapenta, 838 P.2d 1153 (Wyo. 1992)

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