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Negligence-Standard of Care of Minor Drivers

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test in that any substance which is natural *to the finished food product* should be reasonably expected to be present in the food.[24]

While the "reasonable expectation" test is applied in only a small minority of jurisdictions, it appears to be the more logical of the two tests. The foreign-natural distinction is at best an artificial criterion which will achieve a just result in a majority of cases. But where the process of preparing the food for consumption results in a final product which is markedly different from the food in its initial raw state, the foreign-natural distinction loses its validity. The "reasonable expectation" test adopted by the court in *Zabner* provides Florida with a logical and practical test which may be validly applied in all similar cases regardless of the particular circumstances of the situation.

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NEGLIGENCE—STANDARD OF CARE OF MINOR DRIVERS

The plaintiff, aged fourteen, sued the defendant for injuries sustained in a motor scooter-automobile collision. One of the defenses raised was contributory negligence. The plaintiff requested that the trial court charge the jury that in determining the issue of contributory negligence they take the plaintiff's age and experience into account. This request was refused; the jury found for the defendant, and final judgment was entered accordingly. The district court of appeal affirmed.[1] On appeal to the Supreme Court of Florida, *held,* affirmed: The conclusion is inescapable that the legislature in granting to a minor the privilege to operate his motor scooter upon public streets intended that he should assume the obligations and responsibilities imposed upon fellow travelers. Such a requirement is sound, logical and legitimate. *Medina v. McAllister,* 202 So.2d 755 (Fla. 1967).

Generally, minors charged with either negligence or contributory negligence are entitled to be judged by what is reasonably expected of children of like age, intelligence and experience.[2] The widespread use of automobiles by minors has brought about a split of authority as to the standard to be imposed when a child engages in an activity which normally is one for adults only.[3]

24. Although the two tests are substantially similar when viewed in this manner, there are still instances in which a different result could be reached under each test. For instance, struvite crystals would be considered "natural" to a crab or shrimp but their presence in the finished food product could be found by a jury to be not reasonably expected.

1. Medina v. McAllister, 196 So.2d 773 (Fla. 3d Dist. 1967).

2. City of Jacksonville v. Stokes, 74 So.2d 278 (Fla. 1954); *see generally* PROSSER, TORTS § 32 (3d ed. 1964); 2 HARPER & JAMES, THE LAW OF TORTS § 16 (1956).

3. In addition to automobiles, motorboats and airplanes are included in this general

One approach, which is the minority view,[4] holds that an allowance should be made for the age of the child whether he is engaging in an activity which is peculiar to children or adults or which is engaged in equally by both.[5] The courts taking this approach are of the opinion that children cannot be held to the same standard of care as adults, because they cannot in fact meet it.[6] The keynote to this approach is the refusal to apply an arbitrary standard:

> There is no arbitrary rule fixing the time at which a child during his minority may be declared wholly capable or incapable of understanding and avoiding dangers to be encountered while engaged in such an activity. Whether or not negligence may be attributed to a minor is usually a matter for a jury under the circumstances of each case.[7]

The second view, with which Florida became aligned in the instant case, is that children, when given adult privileges, are simultaneously given adult responsibilities and are consequently judged by adult standards.[8]

In the case of automobiles and other motor vehicles, legislative intent and public policy are the two main reasons put forth why children should be held to the same standard of care as adults.

The first reason, heavily relied upon by the court in the instant case, is that the legislature, when adopting qualifications for operators of motor vehicles set up standards "which of necessity must be possessed by every operator, adult or minor, of motor vehicles on the public streets to protect others from harm."[9] Many other jurisdictions have concluded that

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area. For an excellent case involving a motorboat see Dellwo v. Pearson, 259 Minn. 452, 107 N.W.2d 859 (1961).

4. It will be noticed that many of the cases cited in support of this position are pre-1950. In more than one instance a court originally holding a minor to the more lenient standard has reversed itself upon reconsideration of the question. For example, New Hampshire, in Charbonneau v. McRury, 84 N.H. 501, 153 A. 457 (1931), vigorously applied the lenient rule on standard of care to a minor driver; however, in Daniels v. Evans, 107 N.H. 407, 224 A.2d 63 (1966), the court rejected thirty years of precedent and applied a strict statutory approach to overrule its earlier decision.

5. Nehrbass v. Home Indem. Co., 37 F. Supp. 123 (W.D. La. 1941); Wolf v. Budzyn, 305 Ill. App. 603, 27 N.E.2d 571 (1940); Norby v. Klukow, 249 Minn. 173, 81 N.W.2d. 776 (1957); Bear v. Auguy, 164 Neb. 756, 83 N.W.2d 559 (1957); Rines v. Rines, 97 N.H. 55, 80 A.2d 497 (1951) (applying Maine law); Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

6. This was the reasoning applied in Charbonneau v. McRury, 84 N.H. 501, 153 A. 457 (1931), and it has received unqualified support from many other jurisdictions.

7. Bear v. Auguy, 164 Neb. 756, 768, 83 N.W.2d 559, 567 (1957).

8. Prichard v. Veterans Cab Co., 63 Cal. 2d 727, 408 P.2d 360, 47 Cal. Rptr. 904 (1965); Scheetz v. Welch, 89 Ga. App. 749, 81 S.E.2d 319 (1954); Garatoni v. Teegarden, 129 Ind. App. 500, 154 N.E.2d 379 (1958); Allen v. Ellis, 191 Kan. 311, 380 P.2d 408 (1963); Nielsen v. Brown, 232 Ore. 426, 374 P.2d 896 (1962) (dictum); Wittmeier v. Post, 78 S.D. 520, 105 N.W.2d 65 (1960) (dictum); Powell v. Hartford Accident & Indem. Co., 217 Tenn. 503, 398 S.W.2d 727 (1966); Mann v. Fairbourn, 12 Utah 2d 342, 366 P.2d 603 (1961) (dictum).

9. Medina v. McAllister, 202 So.2d 755, 757 (Fla. 1967).

since statutes make no specific exceptions for minors driving automobiles there should be no special standard of care applied to them.[10]

A second justification for requiring an adult standard of conduct for minor drivers is that it would be unfair to the public as a whole to permit a minor operating a motor vehicle to observe any other standard of care and conduct than that required of an adult.[11] It has been aptly pointed out that:

> [O]ne cannot know whether the operator of an approaching automobile is a minor or an adult, and usually one cannot protect himself against youthful imprudence even if warned.[12]

Almost every jurisdiction that has spoken at length on this subject has made mention of the ever increasing accident and fatality rates in this country caused by the negligent handling of automobiles,[13] and it is undoubtable that the decisions requiring the same standard of care of all drivers are influenced somewhat by this increasing accident rate.[14]

A few cases make a distinction between primary and contributory negligence and hold that although the age of the minor vehicle operator is not a factor in determining primary negligence, it must be taken into consideration on the issue of contributory negligence.[15] This argument was presented by the minor plaintiff in the instant case. Although the Supreme Court of Florida did not discuss this point,[16] the district court of appeal made the following comments:

> [S]ome jurisdictions which hold a minor motorist to an adult standard of care for his primary negligence apply a more lenient rule for his contributory negligence, but we can observe no sound basis for so doing.[17]

As has been previously stated, the court in the instant case relied mainly on a statutory approach to the problem of juvenile drivers. The court considered three Florida statutes providing for: (1) the licensing of

10. Harrelson v. Whitehead, 236 Ark. 325, 365 S.W.2d 868 (1963); Wagner v. Shanks, 194 A.2d 701 (Del. Sup. 1963); Wilson v. Shumate, 296 S.W.2d 72 (Mo. 1956); Daniels v. Evans, 107 N.H. 407, 224 A.2d 63 (1966); Karr v. McNeil, 92 Ohio App. 458, 110 N.E.2d 714 (1952).

11. *See* authorities cited note 8 *supra*.

12. Dellwo v. Pearson, 259 Minn. 452, 458, 107 N.W.2d 859, 863 (1961).

13. Recent statistics bear out the validity of the courts' reasoning. In 1966, 52,500 persons were killed and 4,400,000 injured in the United States as a result of motor vehicle accidents. Of these totals, 17.7% and 22% respectively represent children between 10 and 19 years of age. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 573 (88th ed. 1967).

14. *See* Dellwo v. Pearson, 259 Minn. 452, 458, 107 N.W.2d 859, 863 (1961).

15. Betzold v. Erickson, 35 Ill. App. 2d 203, 182 N.E.2d 342 (1962) (dictum); Dellwo v. Pearson, 259 Minn. 452, 107 N.W.2d 859 (1961) (dictum).

16. The Supreme Court of Florida merely stated the rule applied to both primary and contributory negligence making no reference to this extreme minority position. Medina v. McAllister, 202 So.2d 755 (Fla. 1967).

17. Medina v. McAllister, 196 So.2d 773, 774 n.1 (Fla. 3d Dist. 1967).

motor vehicle operators,[18] (2) the issuance of a special restricted license for operators of motorcycles, motor scooters, and motor bikes,[19] and (3) the requirement of an examination of eyesight, knowledge of traffic laws and highway signs, and an actual demonstration of ability to operate a vehicle.[20] The court then observed that in taking the examination, each applicant, whether adult or minor, must show "an adeptness in motor vehicle operation and the 'ability to exercise *ordinary* and *reasonable* control in the operation of a motor vehicle.' "[21]

It is the writer's opinion that the Florida court reached a sound conclusion in this case of first impression. The decision follows the more modern trend in negligence law, and the courts will probably extend this line of reasoning to include motorboats, airplanes, and other such dangerous instrumentalities currently being used by minors.

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FEDERAL QUESTION VENUE— UNINCORPORATED ASSOCIATIONS

The plaintiff-railroad brought an action against the defendant-union and others for damages resulting from an illegal strike. The United States District Court for the District of Colorado, treating the defendant unincorporated association like a corporation,[1] overruled the defendant labor union's motion to dismiss for improper venue. The court held the strike illegal[2] and awarded damages to the plaintiff for revenue lost as a result of the strike. The United States Court of Appeals for the Tenth Circuit reversed,[3] holding that the union could be sued under the general venue statute only in the district of its residence[4] and that the union's

18. FLA. STAT. § 322.03 (1965).
19. FLA. STAT. § 322.16 (1965).
20. FLA. STAT. § 322.12 (1965).
21. Medina v. McAllister, 202 So.2d 755, 757 (Fla. 1967) (emphasis supplied).

1. The district court based its reasoning upon Rutland Ry. v. Brotherhood of Locomotive Eng'rs, 188 F. Supp. 721 (D. Vt. 1960), *aff'd*, 307 F.2d 21 (2d Cir. 1962).

2. In December, 1959, and in January, 1960, the National Railroad Adjustment Board issued monetary awards to the Union for breach of collective bargaining agreements by the Railroad, which refused to pay. The Union, without exhausting statutory remedies to enforce the awards, called a strike for May 16, 1960, but the district court issued a temporary restraining order, then a preliminary injunction, and finally a permanent injunction. 185 F. Supp. 369 (D. Colo. 1960), *aff'd*, 290 F.2d 266 (10th Cir. 1961), *cert. denied*, 366 U.S. 966 (1961). However, revenue losses resulted to the Railroad when several large shippers, believing the strike to be a threat, diverted shipments to other freight lines. The Railroad now seeks damages under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (1964).

3. Brotherhood of R.R. Trainmen v. Denver & Rio Grande Western R.R., 367 F.2d 137 (10th Cir. 1966).

4. 28 U.S.C. § 1391(b) (1964):