Chicago-Kent Law Review

Volume 60 | Issue 3 Article 11

June 1984

Negligent Infliction of Emotional Distress: Liberalizing Recovery Beyond the Zone of Danger Rule - Rickey v. Chicago Transit Authority

Keith J. Wenk

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS: LIBERALIZING RECOVERY BEYOND THE ZONE OF DANGER RULE

Rickey v. Chicago Transit Authority
98 Ill. 2d 546, 457 N.E.2d 1 (1983)

KEITH J. WENK*

A common fact pattern for a cause of action for negligent infliction of emotional distress includes the following: negligence is committed upon the victim; a bystander observes the negligent conduct inflicted upon the victim; the negligent conduct causes the bystander to suffer emotional distress; and the bystander suffers physical manifestations as a result of the emotional distress.[1] Several rules have been constructed by the courts in an effort to determine whether or not a cause of action for negligent infliction of emotional distress can be maintained. Currently, all jurisdictions require satisfaction of one of three rules of recovery: the impact rule, the zone of danger rule, or a foreseeability standard.[2]

The impact rule requires a plaintiff to sustain physical impact or injury which causes emotional distress in order to recover.[3] However, due to the harsh inflexibility of this rule, which would preclude recovery to the bystander in the common fact pattern above, it is currently followed in only a few jurisdictions.[4] Many of the jurisdictions which have rejected the impact rule have instead opted for the zone of danger

* B.A., University of Illinois at Champaign-Urbana, 1982; Candidate for J.D., I.I.T. Chicago-Kent College of Law, 1985.

1. For analysis on the tort of negligent infliction of emotional distress *see* Comment, *Tort Law: Damages for Emotional Distress-Bystander May Recover for Mental Distress Caused by Witnessing a Negligent Act*, 61 WASH. U.L.Q. 317 (1983); Note, *An Expanding Legal Duty: The Recovery of Damages for Mental Anguish By Those Observing Tortious Activity*, 19 AM. BUS. L.J. 214 (1981); Reidy, *Negligent Infliction of Emotional Distress in Illinois: Living in The Past, Suffering in the Present*, 30 DE PAUL L. REV. 295 (1981).

2. *See* Comment, *Dillon Revisited: Toward a Better Paradigm for Bystander Cases*, 43 OHIO ST. L.J. 931 (1982).

3. *See, e.g.*, Braun v. Craven, 175 Ill. 401, 51 N.E. 657 (1898); Neuberg v. Michael Reese Hosp., 60 Ill. App. 3d 679, 377 N.E.2d 215 (1978). *See infra* notes 10-24 and accompanying text for further discussion of the impact rule.

4. Florida: Gilliam v. Stewart, 291 So.2d 593 (Fla. 1974); Georgia: Howard v. Bloodworth, 137 Ga. App. 478, 224 S.E.2d 122 (1976); Indiana: Charlie Stuart Oldsmobile, Inc. v. Smith, 171 Ind. App. 315, 357 N.E.2d 247 (1976); Kalen v. Terre Haute & I.R. Co., 18 Ind. App. 202, 47 N.E. 694 (1897); Kentucky: Louisville & N.R. Co. v. Roberts, 207 Ky. 310, 269 S.W. 333 (1925); Kentucky Traction & Terminal Co. v. Bain, 161 Ky. 44, 170 S.W. 499 (1914).

rule.[5] According to this rule, a bystander may recover for negligently inflicted emotional distress if, at the time of the injury to the victim, the bystander feared for his own safety and was within the area of high physical risk created by the defendant's negligence.[6] Thus, the impact rule requires a plaintiff to suffer physical impact or injury, whereas the zone of danger rule requires only that a plaintiff be within an area of high risk of physical impact in order to recover.

Some courts have rejected both the impact rule and the zone of danger rule and have applied a foreseeability standard.[7] The traditional foreseeability analysis asks whether the plaintiff was located near the scene of the accident, whether the plaintiff witnessed the third party's injury, and whether the plaintiff was closely related to the third party.[8]

In 1983, the Illinois Supreme Court in *Rickey v. Chicago Transit Authority*,[9] decided to withdraw its application of the impact rule and instead chose to adopt the zone of danger rule for bystander cases involving negligent infliction of emotional distress. This comment will begin with the history of the evolution of the tort of negligent infliction of emotional distress. It will discuss in depth the impact rule, zone of

5. Some of the states which have adopted the zone of danger rule as an alternative to the impact rule include the following: Colorado: Towns v. Anderson, 195 Colo. 517, 579 P.2d 1163 (1978); Connecticut: McGovern v. Piccolo, 33 Conn. Supp. 225, 372 A.2d 989 (1976); Delaware: Robb v. Pennsylvania R.R. Co., 58 Del. 454, 210 A.2d 709 (1965); Illinois: Rickey v. CTA, 98 Ill. 2d 546, 457 N.E.2d 1 (1983); Maryland: Resavage v. Davies, 199 Md. 479, 86 A.2d 879 (1952); Minnesota: Purcell v. St. Paul City Ry. Co., 48 Minn. 134, 50 N.W. 1034 (1892); Nebraska: Hanford v. Omaha & C.B. St. Ry. Co., 113 Neb. 423, 203 N.W. 643 (1925); Tennessee: Shelton v. Russell Pipe & Foundry Co., 570 S.W.2d 861 (1978); Vermont: Savard v. Cody Chevrolet, Inc., 126 Vt. 405, 234 A.2d 656 (1967); Wisconsin: Colla v. Mandella, 1 Wis. 2d 594, 85 N.W.2d 345 (1957).

6. *See, e.g.*, Chiuchiolo v. New England Wholesale Tailors, 84 N.H. 329, 150 A. 540 (1930); Niederman v. Brodsky, 436 Pa. 401, 261 A.2d 84 (1970). *See also* Note, *Limiting Liability for the Negligent Infliction of Emotional Distress: The "Bystander Recovery" Cases*, 54 S. CAL. L. REV. 847, 849 (1981); Flanary, *Bystander Recovery in Texas*, 44 TEX. B.J. 746, 747 (1981).

7. *See* Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968). Some of the cases following *Dillon* (including California decisions) include: Betancourt v. J.C. Penny Co. Inc., 554 F.2d 1206 (1st Cir. 1977); D'Ambra v. United States, 396 F. Supp. 1180 (D.R.I. 1973), *aff'd* 518 F.2d 275 (1st Cir. 1975); Beanland v. Chicago R.I. & P. Ry. Co., 480 F.2d 109 (8th Cir. 1973); Parsons v. Superior Court of Monterey County, 81 Cal. App. 3d 506, 146 Cal. Rptr. 495 (1978); Mobaldi v. Board of Regents of University of California, 55 Cal. App. 3d 573, 127 Cal. Rptr. 720 (1976); Archibald v. Braverman, 275 Cal. App. 2d 253, 79 Cal. Rptr. 723 (1969); D'Amicol v. Alvarez Shipping Co. Inc., 31 Conn. Supp. 164, 326 A.2d 129 (1973); Kelly v. Kokua Sales and Supply Ltd., 56 Hawaii 204, 532 P.2d 673 (1975); Barnhill v. Davis, 300 N.W.2d 104 (Iowa 1981); Dziokonski v. Babineau, 375 Mass. 555, 380 N.E.2d 1295 (1978); Toms v. McConnell, 45 Mich. App. 547, 207 N.W.2d 140 (1983); Portee v. Jaffee, 84 N.J. 88, 417 A.2d 521 (1980); Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979); Landreth v. Reed, 570 S.W.2d 486 (Tex. 1978); Hughes v. Moore, 214 Va. 27, 197 S.E.2d 214 (1973).

8. *See, e.g.*, Dillon v. Legg, 68 Cal. 2d 728, 740-41, 441 P.2d 912, 920, 69 Cal. Rptr. 72, 80 (1968).

9. 98 Ill. 2d 546, 457 N.E.2d 1 (1983).

danger rule and foreseeability standard from *Dillon v. Legg*. It will next discuss and analyze the Illinois Supreme Court's reasoning in *Rickey v. CTA*. Finally, this comment will conclude that although the Illinois Supreme Court made a positive step in adopting the zone of danger rule, the court fell short by failing to adopt the *Dillon* foreseeability standard.

HISTORY OF EMOTIONAL DISTRESS IN BYSTANDER SITUATIONS

A. The Physical Impact Rule

The physical impact rule was the first standard adopted to provide recovery for a cause of action for negligent infliction of emotional distress.[10] Under the impact rule, the plaintiff has to suffer physical impact or injury which, in turn, produces the emotional distress. Without that contact, no recovery is allowed for the mental pain and suffering.[11] A close examination of the impact rule reveals the underlying flaws which motivated many jurisdictions to abandon this rule.

The primary purpose for requiring physical contact has been to prohibit plaintiffs from fabricating emotional distress.[12] The impact rule, however, has failed to prevent fraudulent claims. "[C]ourts have found 'impact' in minor contacts with the person which play no part in causing the real harm, and in themselves can have no importance whatever."[13] Moreover, several courts were unwilling to bar an entire

10. Victorian Railways Commissioners v. Coultas, 13 App. Cas. 222 (Eng. 1888). In *Coultas*, a gatekeeper negligently allowed Mr. Coultas and his wife to drive their buggy across a railroad crossing as a locomotive came towards them. There was no collision; however, the plaintiffs suffered shock and other physical manifestations as a result of the occurrence. The court determined that the plaintiff's injuries normally would not occur as a result of the gatekeeper's negligent act and concluded that an award of damages would extend liability for the act beyond the fault of the defendant. Shortly thereafter, American courts applied the reasoning of the *Coultas* court to similar claims. *See* Braun v. Craven, 175 Ill. 401, 51 N.E. 657 (1898); Cleveland C.C. & St. L. Ry. Co. v. Stewart, 24 Ind. App. 374, 56 N.E. 917 (1900); Spade v. Lynn & Boston R. Co., 168 Mass. 285, 47 N.E. 88 (1897); Ward v. West Jersey & S.R. Co., 65 N.J.L. 383, 47 A. 561 (1900); Mitchell v. Rochester Ry. Co., 151 N.Y. 107, 45 N.E. 354 (1896); Miller v. Baltimore & O.S.W.R. Co., 78 Ohio St. 309, 85 N.E. 499 (1908); Ewing v. Pittsburgh C.C. & St. L. Ry., 147 Pa. 40, 23 A. 340 (1892).

11. *See, e.g.*, Beaty v. Buckeye Fabric Finishing Co., 179 F. Supp. 688, 697 (E.D. Ark. 1959); Morse v. Chesapeake & O. Ry. Co., 117 Ky. 11, 77 S.W. 361, 362 (1903).

12. Cleveland C.C. & St. L. Ry. Co. v. Stewart, 24 Ind. App. 374, 382-86, 56 N.E. 917, 920-21 (1900); Spade v. Lynn & Boston R. Co., 168 Mass. 285, 290, 47 N.E. 88, 89 (1897); Mitchell v. Rochester Ry. Co., 151 N.Y. 107, 110, 45 N.E. 354, 354-55 (1896); Huston v. Freemansburg Borough, 212 Pa. 548, 550-51, 61 A. 1022, 1023 (1905).

13. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 331 (4th Ed. 1971). *See, e.g.*, Kenney v. Wong Len, 81 N.H. 427, 128 A. 343 (1925) (mouse hair in stew touched plaintiff's mouth); Porter v. Delaware, L. & W. R. Co., 73 N.J.L. 405, 63 A. 860 (1906) (dust in eyes); Comstock v. Wilson, 257 N.Y. 231, 177 N.E. 431 (1931) (jolt in minor auto collision); Morton v. Stack, 122 Ohio St. 115, 170 N.E. 869 (1930) (smoke inhalation); Zelinsky v. Chimics, 196 Pa. Super. 312, 175 A.2d 351 (1961) (jostling of occupants in automobile).

class of claims merely because recovery in some might have been ill-founded.[14]

The second reason that has been asserted for requiring physical impact was that emotional injuries suffered in the absence of physical impact were not foreseeable as proximate consequences of the defendant's negligent conduct.[15] However, according to several courts, it is reasonably foreseeable to the defendant that his negligent conduct may cause another to suffer emotional distress.[16]

A third reason for requiring physical impact traditionally has been that emotional injuries were often difficult to validate. Accordingly, the absence of physical impact would hinder the plaintiff's ability to prove that mental anguish was the consequence of the defendant's negligence. However, this argument is no longer considered valid. Recent medical studies have correlated emotional distress with increases in the occurrence of cancer,[17] cardiovascular disease,[18] diabetes,[19] and other illnesses,[20] indicating that a serious life crisis will have a direct effect on an individual's health.[21] Furthermore, additional studies have shown that the effects of personal trauma are not always manifested by physical symptoms; a victim may suffer psychological damage in lieu of physical damage.[22] These studies indicate that claims based on physical impact or injury should no longer be considered more valid than claims based on emotional injuries unaccompanied by impact.

The fourth reason for perpetuating the impact rule was the belief that without a requirement of physical impact, there would be a flood

14. *See* D'Ambra v. United States, 396 F. Supp. 1180 (D.R.I. 1973); *aff'd* 518 F.2d 275 (1975) (hesitant to bar an entire class of claims because of a possible fraudulent suit); Dulieu v. White & Sons, 2 K.B. 669, 681 (1901) (adoption of a strict rule denies recovery for valid claims).

15. *See* Braun v. Craven, 175 Ill. 401, 51 N.E. 657 (1898).

16. *See, e.g.*, Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968); D'Ambra v. United States, 114 R.I. 643, 338 A.2d 524 (1975); Dziokonski v. Babineau, 375 Mass. 555, 380 N.E.2d 1295 (1978).

17. *See* Bahnson, *Stress and Cancer: The State of the Art*, 21 PSYCHOSOMATICS 975 (1980).

18. *See* Buell & Elliot, *Stress and Cardiovascular Disease*, 75 J.S.C. MED. A. 494 (1979).

19. *See* Bradely, *Life Events and the Control of Diabetes Mellitus*, 23 J. PSYCHOSOMATIC RESEARCH 159 (1979).

20. *See* Rabkin & Struening, *Life Events, Stress and Illness*, 194 SCIENCE 1013 (1976).

21. One of these studies has shown that for those who have encountered a "major" life crisis, 71% had an associated health change within two years; for those who encountered a "moderate" crisis, 51% had an associated health change within two years; and for those who encountered a "mild" life crisis, 37% had an associated health change within two years. Holmes & Masuda, *Life Change and Illness Susceptibility* in STRESSFUL LIFE EVENTS: THEIR NATURE AND EFFECTS 61 (B. Dohrenwend & B. Dohrenwend eds. 1974).

22. Karas, Kaltrieder & Horwitz, *Responses to Catastrophe: A Case Study*, 38 DISEASES NERVOUS SYS. 625 (1977). For example, a woman had seen her father fatally shoot her fiance and then witnessed the suicide of her father. The woman did not suffer from physiological complications; however, she did suffer from anxiety and had to receive counseling as a result of the loss of her fiance. *Id.* at 626.

of litigation in bystander cases. However, according to the Florida Appellate Court, the feared onslaught of litigation has not appeared in those states allowing recovery for injuries without impact. The court also noted that the fear of an increase in litigation should not outweigh a plaintiff's right to recover for emotional distress.[23] Although the four concerns for limiting emotional distress recovery were real, abuses of the impact standard and the inability to grant recovery to deserving plaintiffs prompted the majority of American jurisdictions to adopt emerging standards.[24]

B. The Zone of Danger Rule

In 1925, the zone of danger rule was first adopted by an English Court in *Hambrook v. Stokes Brothers.*[25] The American courts soon followed[26] in recognizing the zone of danger rule as a viable alternative to the physical impact rule. According to this rule, a bystander may recover for emotional distress if (1) the distress caused some physical harm to the plaintiff;[27] (2) the plaintiff was placed in a zone of physical danger by the defendant's act[28] and (3) the resulting emotional distress was caused by the plaintiff's fear for his own safety, not for the safety of the victim.[29] The zone of danger rule, although adopted by many jurisdictions, has also been the target of some criticism.

A major drawback of the zone of danger rule is that it is unnecessarily restrictive. The rule automatically excludes recovery by anyone who is not in imminent danger of harm.[30] This drawback was illustrated in *Dillon v. Legg.*[31] In *Dillon*, the plaintiff's daughter, Erin Dillon, was killed by a negligent motorist while her mother (the plaintiff)

23. Stewart v. Gilliam, 271 So.2d 466, 475 (Fla. Dist. Ct. App. 1972). *See also* Okrina v. Midwestern Corp., 282 Minn. 400, 405, 165 N.W.2d 259, 263 (1969); Sinn v. Burd, 486 Pa. 146, 162-163, 404 A.2d 672, 680 (1979); Niederman v. Brodsky, 436 Pa. 401, 411, 261 A.2d 84, 89 (1970).

24. Today, the impact rule is followed in a minority of jurisdictions only. *See supra* note 4.

25. 1 K.B. 141 (1925). In *Hambrook*, a mother and her child were placed in imminent danger by an onrushing cart that was negligently secured at the top of a hill. Although the mother was not struck by the cart, she suffered emotional distress as well as other effects as a result of seeing her child struck. The court held that the defendant breached a duty of care to the mother and that it was therefore reasonably foreseeable that she would be injured because she, too, was in the zone of danger and could fear for her own safety. *Id.* at 142.

26. *See supra* note 5.

27. Dulieu v. White & Sons, 2 K.B. 669, 671 (1901).

28. *Id.* at 684-86.

29. *Id.* at 675-76.

30. McGovern v. Piccolo, 33 Conn. Supp. 225, 372 A.2d 989 (1976) (plaintiff who witnessed son's death in an auto accident denied recovery because not within zone of danger); Guilmette v. Alexander, 128 Vt. 116, 259 A.2d 12 (1969) (plaintiff who witnessed daughter's injury in auto accident denied recovery because not within zone of danger).

31. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

and sister watched. The plaintiff brought action to recover damages for emotional distress, as well as other physical injuries, suffered by her as a result of the death of her daughter. The plaintiff also brought action to recover damages for the emotional disturbance and shock sustained by her daughter. The Superior Court of California determined that the mother could not recover for the distress she suffered because she was not within the zone of danger. On the other hand, the same court determined that the plaintiff's daughter may have been within the zone of danger.[32] The case thus illustrates the restrictiveness of the zone of danger rule. The plaintiff in *Dillon* would not be permitted to recover under the zone of danger rule, yet the plaintiff's daughter, who was a few yards closer to the incident, could recover. Consequently, strict adherence to the zone of danger rule can deny recovery for many valid claims.

A second criticism of the zone of danger rule is its focus on the bystander's concern for his or her own safety. The test ignores the main cause of the emotional injury, the bystander's horror at the peril being inflicted upon the victim of the defendant's negligence.[33] The Supreme Court of Massachusetts, in its rejection of the zone of danger rule, addressed this problem by stating that the zone of danger rule is an inadequate measure of whether physical injury can result from a parent's anxiety which arises when harm is done to a child.[34] "The reasonable foreseeability of such a physical injury to a parent does not turn on whether that parent was or was not a reasonable prospect for the contemporaneous injury because of the defendant's negligent conduct."[35] Although the zone of danger test tends to produce more reasonable opportunity for recovery than the impact rule, and provides a clearer definition of the scope of a defendant's liability, the test has been criticized as lacking logical application to a plaintiff's suffering.[36]

C. *The* Dillon *Foreseeability Standard*

A practical alternative to the zone of danger rule is the *Dillon* foreseeability standard which rests upon general tort principles of duty and foreseeability. In *Dillon v. Legg*,[37] the victim's mother brought an ac-

32. *Id.* at 731, 441 P.2d at 915, 69 Cal. Rptr. at 75. For a further discussion of *Dillon, see infra* notes 37-42 and accompanying text.

33. *See* Dziokonski v. Babineau, 375 Mass. 555, 380 N.E.2d 1295 (1978).

34. *Id.* at 560, 380 N.E.2d at 1300.

35. *Id.*

36. *See supra* note 7.

37. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968). For further discussion of the facts of *Dillon, see supra* text accompanying notes 31-32.

tion to recover damages for emotional distress, as well as other physical injuries, suffered by her as a result of witnessing the death of her child. On appeal, the Supreme Court of California reversed the Superior Court of California and held that the plaintiff, who suffered emotional disturbance and physical injury from the sensory and contemporaneous observance of the accident, had alleged a sufficient claim against the motorist and therefore was entitled to recover.[38] The court rejected the zone of danger rule and developed its own foreseeability standard.[39] Under the *Dillon* standard, liability is based upon a jury finding that a reasonable person under the circumstances should have foreseen the injury to a person in the plaintiff's position.[40] Therefore, the tortfeasor would owe a duty to the bystander if the risk of harm was clearly foreseeable; whether or not the bystander was within the zone of danger would be of no consequence.

The *Dillon* court also feared the floodgate effect of an unlimited emotional distress standard and set out three restrictive factors as general determinants of liability.[41] These factors are:

(1) Whether plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it.
(2) Whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence.
(3) Whether plaintiff and victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.[42]

While the ruling set out in *Dillon* was based only on the facts of that case, many jurisdictions have interpreted *Dillon's* guidelines and applied them to different factual settings. For example, the "closely related" guideline set out in *Dillon* has not been limited to a blood, marriage, or adoption relationship as demonstrated in *Mobaldi v.*

38. *Id.*

39. *Id.* at 740-41, 441 P.2d at 920, 69 Cal. Rptr. at 80. In doing so, the court overruled Amaya v. Home Ice, Fuel & Supply Co., 59 Cal. 2d 295, 379 P.2d 513, 29 Cal. Rptr. 33 (1963).

40. *Id.* at 741, 441 P.2d at 921, 69 Cal. Rptr. at 81.

41. The *Dillon* court recognized that the facts of the case at bar were more clear cut than future fact patterns of cases that may arise. Nevertheless, the court granted recovery even though future cases may be more difficult to decide. To help assist other courts in determining whether a defendant owes a plaintiff a duty of due care, the *Dillon* court set forth three factors. For a listing of these factors *see infra* text accompanying note 42.

42. 68 Cal. 2d at 740-41, 441 P.2d at 920, 69 Cal. Rptr. at 80. Based on these factors, the court will determine on a case by case basis, whether an ordinary man under such circumstances should reasonably have foreseen the injury to the plaintiff. *Id.* at 741, 441 P.2d at 921, 69 Cal. Rptr. at 81.

Board of Regents of University of California.[43] In *Mobaldi*, the plaintiff was the foster mother of a three-year-old child killed by the defendant's negligent infliction of an improper intravenous solution. The court of appeals rejected reliance on the presence of a strictly legal relationship in determining the limits of the guideline, and held that "the emotional attachments of the family relationship and not the legal status are those which are relevant."[44] Thus, courts should consider the quality of a relationship, and not just its title.

The witness guideline of the *Dillon* standard focused on the manner in which the plaintiff learned of the injury to the victim.[45] This determination depended upon whether the observation was contemporaneous with the accident and whether the plaintiff learned of the injury directly from sensory observance of the incident.[46] The court would not allow recovery if a person learned of the accident after the fact from a third person.[47] Thus, there must be a sensory shock, caused by an awareness of the occurrence of an accident which is contemporaneous with the accident itself.

The *Dillon* witness guideline, as well as the other two guidelines, has not been etched in stone. Several courts following the *Dillon* standard have interpreted the witness guideline in different ways. In *Dziokonski v. Babineau*,[48] the Massachusetts Supreme Court extended the *Dillon* witness guideline by stating that the plaintiff must either witness the accident or come upon the scene moments after it happened while the victim was still present.[49] In *Archibald v. Braverman*,[50] the California Court of Appeals granted recovery to a mother who witnessed the results of an accident moments after its occurrence. The court stated that, "the shock sustained by the mother herein was 'contemporaneous' with the explosion so as to satisfy the observance factor."[51] The Supreme Court of New Hampshire in *Corso v. Merrill*,[52] held that even though the father did not directly learn of the injury, he had contemporaneously perceived the injury to his child because he heard his wife's

43. 55 Cal. App. 3d 573, 127 Cal. Rptr. 720 (1976).
44. *Id.* at 583, 127 Cal. Rptr. at 726.
45. 68 Cal. 2d 728, 740-41, 441 P.2d 912, 920, 69 Cal. Rptr. 72, 80 (1968).
46. *Id.* When a plaintiff arrived several hours after the injury had occurred, the court denied recovery because the observation did not occur within the limits closely connected to the accident. Deboe v. Horn, 16 Cal. App. 3d 221, 94 Cal. Rptr. 77 (1971).
47. 68 Cal. 2d at 740-41, 441 P.2d at 920, 69 Cal. Rptr. at 80.
48. 375 Mass. 555, 380 N.E.2d 1295 (1978).
49. *Id.* at 578, 380 N.E.2d at 1299.
50. 275 Cal. App. 2d 253, 79 Cal. Rptr. 723 (1969).
51. *Id.* at 256, 79 Cal. Rptr. at 725.
52. 119 N.H. 647, 406 A.2d 300 (1979).

scream and immediately went to the scene of the accident.[53]

These past decisions indicate that certain courts have interpreted the *Dillon* witness guideline so as not to require the plaintiff to actually witness the negligent act, but merely witness the results of the act as long as the observation occurred at the scene and within a short time after the act.[54] In support of the extension of the witness guideline to include the witnessing of immediate results of the event as opposed to the event itself, the California Court of Appeals stated that, "the shock of seeing an injured child after the event may be just as profound as that experienced in witnessing the event itself."[55]

The *Dillon* witness guideline has been applied flexibly and has provided alternatives to a court considering its validity. The California Court of Appeals found that extending this requirement to include witnessing the results as opposed to witnessing the accident itself will not result in unlimited liability as long as the observation is contemporaneous with the negligent act.[56] The *Dillon* foreseeability standard has been well received in many jurisdictions,[57] and has been noted as the modern rule under which a bystander may recover for emotional distress.[58]

History of Emotional Distress in Bystander Situations in Illinois

The Illinois Supreme Court decided in *Braun v. Craven*,[59] that recovery for negligent infliction of emotional distress was conditional upon proof of contemporaneous physical impact. In *Braun*, the defendant was the landlord of an apartment which he believed was about to be vacated by its tenant. In an attempt to prevent the tenant from moving, the landlord charged into the apartment, confronting the tenant's sister, Mrs. Braun. He proceeded to verbally attack her with angry and abusive language, which upset her greatly. As a result, she

53. *Id.* at 658, 406 A.2d at 307.

54. A plaintiff who brings action for emotional distress as a result of injury to a third party must either be present at the time of the incident (Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968)), or the shock sustained by the plaintiff must be fairly contemporaneous with the incident rather than follow when the plaintiff is informed of the act at a later time. PROSSER, HANDBOOK OF THE LAW OF TORTS 354 (3d ed. 1964). A California court has held that viewing the injury just five minutes after it occurred was not contemporaneous with the accident indicating the court's willingness to prohibit unlimited liability under the *Dillon* standard. Arauz v. Gerhardt, 68 Cal. App. 3d 937, 137 Cal. Rptr. 619 (1977).

55. Archibald v. Braverman, 275 Cal. App. 2d 253, 256, 79 Cal. Rptr. 723, 725 (1969).

56. *Id.*

57. *See supra* note 7.

58. *See* Haught v. Maceluch, 681 F.2d 291, 297 (5th Cir. 1982).

59. 175 Ill. 401, 51 N.E. 657 (1898).

suffered extreme emotional distress which eventually developed into a nervous disorder. Mrs. Braun, the plaintiff, brought a cause of action for the nervous disease she suffered. The court, basing its decision on public policy grounds, noted that the injury suffered by the plaintiff was not reasonably foreseeable, and feared creating a cause of action with potential unlimited liability by rewarding claimants who merely suffered from emotional or mental injuries.[60] Accordingly, the Illinois Supreme Court held that absent contemporaneous physical impact, or injury, a cause of action for emotional distress did not exist.[61]

Since the *Braun* decision, contemporaneous physical impact had been an essential element to a cause of action for negligent infliction of emotional distress in Illinois. However, recent Illinois Appellate Court decisions clearly indicated their opposition to the rule; yet, these courts continued to recognize that the authority to overrule the *Braun* impact standard rested solely in the hands of the Illinois Supreme Court. For example, in *Carlinville National Bank v. Rhoads*,[62] the plaintiff and her husband (the victim) were involved in an automobile accident. After the accident, the plaintiff realized her husband had died. The plaintiff brought action for negligent infliction of mental distress but both the circuit court and Illinois Appellate Court dismissed the claim. The appellate court held that because the plaintiff's mental distress did not occur from a contemporaneous physical injury to her, but merely as a result of witnessing the death of her husband, the plaintiff could not recover.[63] In refusing to sidestep Illinois Supreme Court precedent the appellate court for the fourth district stated:

> While we note that resulting emotional disturbance can be as severe and as certain whether it be caused by an intentional act or by a negligent act, we are bound by decisions of the Illinois Supreme Court. . .[W]e conclude that any recognition of negligent infliction of mental distress as a separate tort must come from the supreme court of this State.[64]

The Illinois Appellate Court for the Third District in *Cutright v. City National Bank of Kankakee*,[65] was also aware of the injustice of

60. *Id.* at 420, 51 N.E. at 664.

61. *Id.* Normally, a bystander who is trying to recover damages for emotional distress as a result of witnessing an injury to another has suffered no physical impact or injury. Accordingly, the impact rule for many years had denied bystander recovery in Illinois.

62. 63 Ill. App. 3d 502, 380 N.E.2d 63 (1978).

63. *Id.* at 505, 380 N.E.2d at 66. The plaintiff actually suffered a broken leg from the automobile accident and therefore incurred physical injury. However, the plaintiff's emotional distress resulted from witnessing the death of her husband, not from the contemporaneous physical injury to herself. *Id.*

64. *Id.*

65. 88 Ill. App. 3d 742, 410 N.E.2d 1142 (1980).

the impact rule, yet refused to abandon it. The court noted that "[a]lthough the rule seems inequitable and may not reflect sound public policy, that question is for the supreme court since we are bound by its decision in *Braun*."[66] However, when the Illinois Appellate Court for the First District decided *Rickey v. CTA*,[67] it departed from the tradition of *stare decisis* by adopting a new standard for bystander recovery in negligent infliction of emotional distress cases. The Illinois Appellate Court chose to adopt the *Dillon* foreseeability standard.[68] The Illinois Supreme Court also rejected the impact rule, but instead decided to adopt the zone of danger rule to determine whether liability existed in *Rickey*.[69]

Rickey v. CTA

Facts of the Case

On February 12, 1972, Robert Rickey, then eight years old, and his brother Richard Michael Rickey, then five years old, were riding a subway escalator owned and operated by the Chicago Transit Authority (CTA).[70] As they descended, Richard's scarf became entangled in the mechanism at the escalator's base.[71] As a result, Richard was choked and deprived of oxygen.[72] By the time Richard was freed, he was in a comatose state.[73] As a result, Richard will be permanently confined to a nursing care facility.[74]

Robert Rickey, who witnessed his brother's injury, subsequently suffered severe mental and emotional distress and psychiatric trauma.[75] This trauma resulted in physical symptoms, including alleged "definite functional, emotional, psychiatric and behavioral disorders, extreme depression, prolonged and continuing mental disturbances, inability to attend school and engage in gainful employment and to engage in his usual and customary affairs."[76] The plaintiff has undergone extensive

66. *Id.* at 744, 410 N.E.2d at 1144.
67. 98 Ill. 2d 546, 457 N.E.2d 1 (1983).
68. 101 Ill. App. 3d 439, 428 N.E.2d 596 (1981), *aff'd*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983).
69. 98 Ill. 2d 546, 457 N.E.2d 1 (1983).
70. *Id.* at 549, 457 N.E.2d at 2.
71. *Id.*
72. *Id.*
73. Rickey v. CTA, 101 Ill. App. 3d 439, 440, 428 N.E.2d 596, 597 (1981), *aff'd*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983).
74. Rickey v. CTA, 98 Ill. 2d 546, 549, 457 N.E.2d 1, 2 (1983).
75. *Id.*
76. *Id.* at 550, 457 N.E.2d at 2.

medical and psychiatric treatment for his condition.[77]

The plaintiff's mother, on behalf of the minor plaintiff, brought an action to recover for emotional distress[78] which resulted from the alleged negligence of defendants CTA, United States Elevator Corporation and Midland Elevator Company.[79] The plaintiff also sought recovery against Otis Elevator Company upon the theory of strict product liability.[80] The Circuit Court of Cook County held that there was no cause of action for emotional distress caused by the negligence of another, absent a contemporaneous physical impact upon the bystander (Robert), or for emotional distress under a strict product liability theory.[81] The court granted the defendant's motion to dismiss the complaint with prejudice.[82]

The plaintiff appealed and the appellate court affirmed the dismissal of the complaint pertaining to Otis Elevator, but reversed the circuit court's decision as to the CTA and U.S. Elevator Corporation, and remanded the cause to the circuit court.[83] The appellate court noted that the time had come to reevaluate the impact rule.[84] Thus, the appellate court abandoned the impact rule and adopted a standard similar to that set out in *Dillon*.[85]

77. Rickey v. CTA, 101 Ill. App. 3d 439, 440, 428 N.E.2d 596, 597 (1981), *aff'd*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983).

78. Emotional distress may be defined as a reaction to a traumatic stimulus which may be physical, psychic or both. The reaction can be broken down into primary and secondary stages. The primary stage is the individual's initial reaction to the traumatic stimulus, and is normally of short duration without lasting ill effects. . . . The secondary reaction, or traumatic neurosis as it is commonly termed, develops after the primary stage has diminished and can entail severe, long-lasting, ill effects.

Comment, *Negligent Infliction of Emotional Harm to Bystanders-Should Recovery Be Denied*, 7 ST. MARY'S L. J. 560, 562-63 (1973).

79. Rickey v. CTA, 98 Ill. 2d 546, 548, 457 N.E.2d 1, 2 (1983). There were numerous acts of negligence alleged against the CTA. It was alleged that the CTA failed to adequately maintain and inspect the escalators. In addition, some of the alleged acts of negligence included violations of the American Safety Code for Escalators A. 17.1 (1955). Also, there were specific acts of negligence alleged against Midland Elevator Company and United States Elevator Company because of improper inspection and repair of the escalator. Complaint at Law, Count I, ¶ 11, Rickey v. CTA, 98 Ill. 2d 546, 457 N.E.2d 1 (1983).

80. Otis Elevator Company manufactured and sold the escalator to the CTA. *Id.*

81. *Id.* at 548-549, 457 N.E.2d at 1, 2.

82. *Id.*

83. *Id.*

84. Rickey v. CTA, 101 Ill. App. 3d 439, 441, 428 N.E.2d 596, 598 (1981), *aff'd*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983). The court stated that two reasons justified the reevaluation of the impact rule. First, the Illinois Supreme Court in Knierim v. Izzo, 22 Ill. 2d 73, 174 N.E.2d 157 (1961), permitted recovery for the intentional infliction of emotional distress absent impact. Second, cases from all of the six states relied upon by the Illinois Supreme Court in Braun v. Craven, 175 Ill. 401, 51 N.E. 657 (1898), have been overruled. *Id.*

85. The appellate court stated:

[T]he cause before us possesses adequate safeguards against the hazards of unlimited liability. First, the minor plaintiff was located near the scene of the accident. Second, his

The Supreme Court of Illinois granted the petitions of the CTA and U.S. Elevator Corporation for leave to appeal in order to answer the question: "whether a bystander who did not suffer physical injury or impact at the time of the occurrence may recover damages for emotional distress which resulted from witnessing an injury to his brother caused by the defendant's negligence."[86] The court affirmed the judgment of the appellate court by rejecting the impact rule. However, the supreme court chose not to accept the *Dillon* standard.[87] The supreme court instead adopted the zone of danger rule[88] and further determined that this standard should replace the long-standing impact rule, and that it should be applied to the present case and all cases not yet adjudicated. The case was remanded to the Circuit Court of Cook County to precisely determine the facts and to proceed in a manner consistent with the supreme court's decision.[89]

Reasoning of the Illinois Supreme Court

In reviewing *Rickey v. CTA*,[90] the Illinois Supreme Court agreed with the appellate court that the *Braun* decision should no longer govern bystander cases in Illinois.[91] However, where the appellate court chose to follow *Dillon*, the supreme court instead stated that *Rickey* and other unadjudicated bystander cases should follow the zone of danger rule.[92]

The supreme court began by noting that traditionally, a bystander who witnessed the injury of another had not been permitted to recover for negligent infliction of emotional distress unless the distress was accompanied by contemporaneous physical impact.[93] The court then agreed with the appellate court's finding that because of the many jurisdictions that have abandoned the impact rule and the development of the law in areas dealing with mental distress, it is necessary to take a close look at the impact rule.[94]

injuries allegedly resulted from a direct emotional impact caused by the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. Third, the plaintiff and victim were closely related. 101 Ill. App. 3d 439, 442, 428 N.E.2d 596, 599 (1981), *aff'd*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983).

86. Rickey v. CTA, 98 Ill. 2d 546, 549, 457 N.E.2d 1, 2 (1983).
87. *Id.* at 554-55, 457 N.E.2d at 4.
88. *Id.* at 555, 457 N.E.2d at 5.
89. *Id.* at 556, 457 N.E.2d at 5.
90. *Id.* at 546, 457 N.E.2d at 1.
91. *Id.* at 554, 457 N.E.2d at 4.
92. *Id.* at 555-56, 457 N.E.2d at 5.
93. *Id.* at 550, 457 N.E.2d at 2.
94. *See supra* note 84 and accompanying text.

The supreme court acknowledged that the majority of jurisdictions no longer require physical impact for a cause of action for emotional distress.[95] The court noted that the impact rule lost its popularity because the "impact" requirement was easily satisfied by minor physical contacts.[96] The Illinois Supreme Court then chose to follow other jurisdictions which have recently abandoned the impact rule.[97] The court stated, "recovery for emotional distress caused by another's negligence should not be determined solely on whether there was a contemporaneous physical impact upon the plaintiff."[98]

Although the supreme court agreed that a new rule was needed in bystander recovery cases, the court concluded that it could not adopt the appellate court's standard because it was excessively broad.[99] The supreme court believed that the standard was too broad because it would allow recovery for emotional disturbance or distress alone as opposed to requiring a manifestation of physical symptoms of the plaintiff's emotional distress.[100] Supporting the statement that the appellate court's standard was excessively broad, the supreme court noted that the opportunity for fraudulent claims would increase, that damages would be difficult to assess, that emotional injuries would not be foreseeable, and that frivolous litigation would be enhanced.[101] Moreover, the supreme court would not adopt the appellate court's standard because it believed it was too vague to be used by courts.[102]

ANALYSIS OF THE COURT'S DECISION

In *Rickey v. CTA*,[103] the Illinois Supreme Court rejected the impact rule as the test to determine whether or not a cause of action exists for negligent infliction of emotional distress. The supreme court re-

95. Rickey v. CTA, 98 Ill. 2d 546, 553, 457 N.E.2d 1, 4 (1983).

96. *Id.*

97. *See, e.g.*, Bass v. Nooney Co., 646 S.W.2d 765 (Mo. 1983); Schultz v. Barberton Glass Co., 4 Ohio St. 3d 131, 447 N.E.2d 109 (1983). In *Bass*, in which the Supreme Court of Missouri recently abandoned the impact rule, an elevator passenger brought action against building owners to recover for severe emotional distress suffered by reason of being trapped in a stalled elevator. The court abandoned the impact rule and adopted its own foreseeability standard: a plaintiff will be permitted to recover for emotional distress provided: 1) the defendant should have realized that his conduct involved an unreasonable risk of causing the distress; and 2) the emotional distress or mental injury must be medically diagnosable and must be of sufficient severity so as to be medically significant. 646 S.W.2d at 772-73.

98. Rickey v. CTA, 98 Ill. 2d 546, 554, 457 N.E.2d 1, 4 (1983).

99. The appellate court felt the standard they adopted prevented against unlimited liability. *See supra* note 85.

100. Rickey v. CTA, 98 Ill. 2d 546, 554, 457 N.E.2d 1, 4 (1983).

101. *Id.* at 555, 457 N.E.2d at 5.

102. *Id.* at 554, 457 N.E.2d at 4.

103. 98 Ill. 2d 546, 457 N.E.2d 1 (1983).

fused to accept the appellate court in its adoption of the *Dillon* standard, but instead chose to apply the zone of danger rule to bystander cases. The supreme court failed to give a reasoned explanation for rejecting the *Dillon* standard. The supreme court merely stated that they would be adopting a standard that is vague and overbroad because it would permit recovery for emotional distress alone. In support of the conclusion that the appellate court's *Dillon*-like standard was excessively broad, the court simply opted to utilize the same reasons which have been used to support the use of the outdated impact rule in the past.[104]

The zone of danger rule is an illogical and restrictive standard to apply to negligent infliction of emotional distress cases. This was recognized by the Supreme Court of California in *Dillon v. Legg*.[105] The court stated, "we can hardly justify relief to the sister for trauma which she suffered upon apprehension of the child's death and yet deny it to the mother merely because . . . the sister was some few yards closer to the accident."[106] The court proceeded to reject the zone of danger rule and instead developed its own foreseeability standard to apply to the instant case and for courts to apply to future bystander cases.

In a case similar to *Dillon*, the Superior Court of Pennsylvania in *Sinn v. Burd*,[107] held that the plaintiff's daughter, who was standing alongside a road with her sister (the victim), was within the zone of danger. Therefore, the plaintiff (the mother) could recover for the psychological damages the daughter suffered as a result of witnessing her sister die. On the other hand, the plaintiff, who also witnessed the death of her daughter from the front door of her home and subsequently suffered severe emotional distress including depression and an acute nervous condition, was not within the zone of danger, and therefore could not recover for her suffering.[108] On appeal, the Supreme Court of Pennsylvania stated, "experience has taught us that the zone of danger requirement can be unnecessarily restrictive and prevent recovery in instances where there is no sound policy basis supporting such a result."[109] The court further noted that "the emotional impact

104. The impact rule was implemented by many courts because they felt that absent physical impact, injuries would be unforeseeable, fraudulent claims would be encouraged, and courts also feared a flood of litigation would occur. *See, e.g.*, Mitchell v. Rochester Railway, 151 N.Y. 107, 108-110, 45 N.E. 354, 355 (1896).

105. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

106. *Id.* at 731, 441 P.2d at 915, 69 Cal. Rptr. at 75.

107. 486 Pa. 146, 404 A.2d 672 (1979).

108. *Id.* at 152, 404 A.2d at 674-75.

109. *Id.* at 155, 404 A.2d at 677.

upon a mother from the sudden and violent death of her small child is unquestionably as traumatic as would have been the case if the mother had also been within the zone of danger."[110] Consequently, the court rejected the zone of danger rule and adopted the *Dillon* foreseeability standard.[111]

The Illinois Supreme Court's decision to adopt the zone of danger rule seems to imply that recovery for negligent infliction of emotional distress should only be permitted when one fears for his or her own safety rather than fear for the safety of another. However, the emotional impact one suffers from a defendant's negligent conduct is influenced by the event witnessed, rather than the plaintiff's awareness of personal exposure to danger. An example of this was illustrated in *Sinn v. Burd*.[112] The plaintiff there was permitted to recover for psychological damages her daughter sustained as a result of watching her sister die, not because the daughter feared for her own safety.[113] Also, by adopting the zone of danger rule, recovery in Illinois will depend upon the position of the plaintiff at the time of the event. Accordingly, an individual who may have been a few yards from the incident and thus, not within the zone of danger, will not recover damages even though the emotional trauma suffered may have been just as severe as one who also witnessed the incident, but was within the zone of danger.

The *Dillon* standard is a logical and flexible standard to determine whether liability exists for negligent infliction of emotional distress. The Supreme Court of Illinois would not adopt the *Dillon* standard because the court considered the standard to be too vaguely defined.[114] Yet, the supreme court failed to give any support for that conclusion. Previous decisions applying the *Dillon* standard indicate that it provides a court with sufficient guidance, while allowing the flexibility necessary to do justice in each case. *Mobaldi v. Board of Regents of University of California*[115] was evidence of the fact that the "closely related" guideline has not been limited to a blood, marriage, or adoption

110. *Id.* at 167, 404 A.2d at 683.

111. *Id.* at 172-73, 404 A.2d at 686. Under the *Dillon* standard the Supreme Court of Pennsylvania determined that the plaintiff's injuries were foreseeable. The court stated, "where the bystander is a mother who witnessed the violent death of her small child and the emotional shock emanated directly from personal observation of the event, we hold as a matter of law that the mental distress and its effects is a foreseeable injury." *Id.*

112. *Id.* at 146, 404 A.2d at 672.

113. *Id.* at 150-51, 404 A.2d at 674.

114. Rickey v. CTA, 98 Ill. 2d 546, 554, 457 N.E.2d 1, 4 (1983).

115. 55 Cal. App. 3d 573, 127 Cal. Rptr. 720 (1976). For a further discussion of *Mobaldi, see supra* notes 43-44 and accompanying text.

relationship. Also, *Archibald v. Braverman*[116] indicated that the witness guideline of the *Dillon* standard has been extended to include witnessing the results of an accident rather than witnessing the accident itself. These cases show that the guidelines of *Dillon*, because flexible, can be defined by an adopting jurisdiction thus eliminating vagueness in that jurisdiction. There is no conceivable reason why the Illinois Supreme Court could not itself adequately define the guidelines of *Dillon* to eliminate any vagueness which the court perceives.

The court's concern over the possible occurrence of frivolous litigation is unsupported. In addition to rejecting the *Dillon* standard because it was vaguely defined, the supreme court also rejected the standard the appellate court accepted on the grounds that it was excessively broad because it would permit recovery for emotional distress alone.[117] The court feared there would be an increase in frivolous litigation if recovery was permitted for purely emotional distress. Traditionally, courts have favored the requirement of physical manifestation of the injury because it was perceived to be much easier to fabricate a claim for mental disturbance alone. In *Rickey*, however, the supreme court need not have interpreted *Dillon* so narrowly. Because of the flexibility of the *Dillon* standard, several jurisdictions have adhered to the standard and still required a manifestation of physical symptoms which resulted from emotional distress.[118] The supreme court needed only to require that a plaintiff manifest physical injury as a result of the emotional distress as other jurisdictions have done, in order to regulate the breadth of the rule and put an end to the concern of frivolous litigation.

Emotional injuries suffered in the absence of a manifestation of

116. 275 Cal. App. 2d 253, 79 Cal. Rptr. 723 (1969). For a further discussion of *Archibald, see supra* notes 50-51 and accompanying text.

117. Rickey v. CTA, 98 Ill. 2d 546, 554, 457 N.E.2d 1, 4 (1983).

118. For examples of cases where the court has held that a physical injury must accompany the distress *see, e.g.*, Keck v. Jackson, 122 Ariz. 114, 593 P.2d 668 (1979) (the plaintiff's shock or mental anguish must result in a physical injury); Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968) (plaintiff suffered shock resulting in injury); Dziokonski v. Babineau, 375 Mass. 555, 380 N.E.2d 1295 (1978) (substantial physical injury required); Corso v. Merrill, 119 N.H. 647, 406 A.2d 300 (1979) (emotional harm must be a painful mental experience with lasting effects, manifested by physical symptoms susceptible of medical proof).

For examples of cases where courts have not required the presence of a physical injury before awarding recovery for mental distress, *see, e.g.*, Molien v. Kaiser Foundation Hosp. 27 Cal. 3d 916, 616 P.2d 813, 167 Cal. Rptr. 831 (1980); Leong v. Takasaki, 55 Hawaii 398, 520 P.2d 758 (1974); Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979).

In *Sinn*, the Supreme Court of Pennsylvania adopted the *Dillon* standard but only required that the plaintiff suffer emotional distress; a showing of physical injury as a result of the emotional distress was not necessary. However, Justice Roberts in his dissent stated, that without a physical injury, any reward of damages would be speculative. 486 Pa. 146, 175, 404 A.2d 672, 688 (1979).

physical symptoms are foreseeable as consequences of a defendant's negligent conduct. The supreme court, in its reluctance to allow recovery for solely emotional injuries, believed that emotional injuries are not foreseeable. However, the Supreme Court of California, in *Dillon v. Legg*,[119] addressed a similar fear when the court stated "[a tortfeasor] who causes [injury to] a young child may reasonably expect that the mother will not be far distant and will upon witnessing the accident suffer emotional trauma."[120] In addition, modern science has shown that claims based on emotional injuries can be proven without a physical manifestation of injury.[121]

Permitting recovery under the *Dillon* standard for purely emotional distress will not create a flood of litigation as the Illinois court feared it would. The supreme court was also concerned with the possible occurrence of a flood of litigation if recovery under *Dillon* was allowed for emotional distress alone. However, even if recovery is allowed for emotional distress alone, a flood of litigation should not occur under *Dillon*. Each of the *Dillon* guidelines sets out specific requirements.[122] For example, the plaintiff must be closely related to the victim to recover. Also, the plaintiff must learn of the injury from sensory observance of the incident and the observance must be contemporaneous with the incident. As a result of these guidelines, recovery will not be granted in every negligent infliction of emotional distress case. Each guideline should be satisfied before recovery will be permitted.

Moreover, if a court is still concerned that a flood of litigation will occur under the *Dillon* standard, the flexibility of that standard should guard against a flood of litigation. The flexibility of *Dillon* will allow a court to require manifestation of physical symptoms as a result of the emotional distress rather than allowing recovery merely for emotional trauma. A court may choose to extend the witness guideline only to include witnessing the accident itself rather than extending it further to include witnessing the results of an accident. Also, the "closely re-

119. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

120. *Id.* at 740, 441 P.2d at 921, 69 Cal. Rptr. at 80.

121. Sinn v. Burd, 486 Pa. 146, 160, 404 A.2d 672, 679 (1979). According to one commentator:

> The growing competence of medical science in the field of psychic injuries has diminished the problems of proof in mental distress cases. The development of psychiatric tests and the refinement of diagnostic techniques has led some authorities to conclude that science can establish with reasonable medical certainty the existence and severity of psychic harm.

Comment, *TORTS-Mental Distress-Summary Judgment Improper Where Plaintiffs Allege Severe Mental Distress Despite Their Absence From Location of Tortious Activity*, 63 GEO. L. J. 1179, 1184 (1975).

122. *See supra* notes 41-42 and accompanying text for a further discussion of the *Dillon* standard.

lated" guideline may be limited to a blood, marriage, or adoption relationship.

The Illinois Appellate Court for the First District, as well as several other jurisdictions, has chosen the *Dillon* standard[123] because it has permitted recovery for many valid claims for negligent infliction of emotional distress. However, the Supreme Court of Illinois did not agree with the first district. While the supreme court's ruling offers a greater legal remedy than the outdated impact rule, it is still prohibitive as it invalidates claims from plaintiffs who have not been endangered yet still suffer from emotional trauma. As a result, many valid claims will continue to be ignored. However, the *Rickey* decision does indicate the supreme court's willingness to afford greater opportunity for recovery. Perhaps this decision is a positive step toward the acceptance of the *Dillon* standard, a more liberal and flexible standard for determining liability.

CONCLUSION

By rejecting the unpopular impact rule, the Illinois Supreme Court has finally recognized that a contemporaneous physical impact need not be the sole requirement for recovery for negligent infliction of emotional distress. As a result, the courts will be able to satisfy a greater number of valid claims; plaintiffs who were not physically injured still have the opportunity to recover for emotional distress.

Unfortunately, the Illinois Supreme Court has adopted the zone of danger rule as its replacement. Although limits should be placed on recovery for emotional distress, there is no apparent justification for imposing the limitations of the zone of danger rule. A satisfactory solution is found in the application of the *Dillon* standard, which allows the court to exercise the necessary discretion and flexibility required to make decisions without allowing unlimited liability. Accordingly, the Illinois Supreme Court should have adopted the *Dillon* standard and adequately defined the guidelines to eliminate any fear that it is overbroad and vague.

123. *See supra* note 7.