TORTS—PARENT-CHILD—NEGLIGENT SUPERVISION AND INSTRUCTION PROTECTED BY PARENT-CHILD IMMUNITY—*Foldi v. Jeffries*, 182 N.J. Super. 90, 440 A.2d 58 (App. Div. 1981).

The parent-child immunity doctrine,[1] a controversial principle which denies an unemancipated child the right to institute suit against his parents,[2] is laden with moral overtones that complicate the resolution of tort actions between parent and child. Under this doctrine, parents historically enjoyed complete immunity for all tortious wrongs personally inflicted upon their offspring.[3] Shocking factual scenarios[4] and progressive jurisprudential notions,[5] however, ultimately warranted a restriction of the doctrine to actions in negligence.[6] Yet, the application of parental immunity by the courts to negligence cases has not been uniform among jurisdictions.[7] The courts apply the immu-

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[1] For a discussion of the early American cases that constitute the root of the parent-child immunity doctrine, see *infra* text accompanying notes 22-38.

[2] W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 122, at 865 (4th ed. 1971). Courts have predicated parental immunity on seven considerations: family tranquility, danger of fraud, possibility of succession, depletion of the family exchequer, analogy to interspousal immunity, domestic governance, and parental discipline and control. McCurdy, *Torts Between Persons in Domestic Relations*, 43 HARV. L. REV. 1030, 1072-76 (1930). For a discussion of these considerations, see Comment, *The Parent-Child Tort Immunity in Massachusetts*, 12 NEW ENG. L. REV. 309, 313-15 (1976) [hereinafter cited as Comment, *Tort Immunity in Massachusetts*]; Comment, *Parental Immunity: Mississippi's Gift to the American Family*, 7 WAKE FOREST L. REV. 597, 603-06 (1971) [hereinafter cited as Comment, *Parental Immunity*.].

[3] *E.g.*, Hewlett v. George, 68 Miss. 703, 9 So. 835 (1891) (parental immunity from intentional tort action based on false imprisonment); Reingold v. Reingold, 115 N.J.L. 532, 181 A. 153 (1935) (parental immunity from negligence action for automobile accident injury), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 506-07, 267 A.2d 490, 494 (1970).

[4] See *infra* text accompanying notes 28, 32 & 35.

[5] For example, courts have considered the most common justifications for parental immunity—preservation of family harmony and prevention of collusive claims—and determined that these justifications are no longer sufficient to bar meritorious claims. *See, e.g.*, Small v. Rockfeld, 66 N.J. 231 (1974) (recognizing that reliance on family harmony justification was without authority and rejecting immunity); France v. A.P.A. Transp. Corp., 56 N.J. 500 (1970) (rejecting family harmony justification; indicating that courts can ferret out fraudulent claims); Holodook v. Spencer, 36 N.Y.2d 35, 324 N.E.2d 338, 364 N.Y.S.2d 859 (1974) (finding danger of fraud insufficient basis for parental immunity). Instead of invoking the immunity doctrine based upon these justifications or relying on the force of the criminal law to vindicate wrongs between family members, *cf.* Tevis v. Tevis, 155 N.J. Super. 273 (App. Div. 1978) (finding intentional tort claim against spouse actionable), the courts have shifted their focus to the fundamental principle of civil law, "provid[ing] redress for wrongful injury." Merenoff v. Merenoff, 76 N.J. 535, 547 (1978); *see also* Peterson v. City of Honolulu, 51 Hawaii 484, 462 P.2d 1007 (1970) (finding children entitled to same redress for wrongs as adults).

[6] *See infra* text accompanying notes 68-75. *See generally* Annot., 6 A.L.R.4th 1066 (1981).

[7] *Compare* Peterson v. City of Honolulu, 51 Hawaii 484, 462 P.2d 1007 (1970) (permitting child to pursue negligence claims against parents) *and* Briere v. Briere, 107 N.H. 432, 437, 224 A.2d 588, 591 (1966) (holding that there are "no sufficient grounds for denying unemancipated minors as a class a right enjoyed by other individuals") *and* Rupert v. Stienne, 90 Nev. 397, 528 P.2d 1013 (1974) *with* cases cited *infra* note 8.

nity doctrine in varying degrees. Some jurisdictions find parents absolutely immune.[8] Most courts provide parents with partial immunity and formulate standards[9] to determine the immunity's appropriateness to a given negligent episode.[10] Recently, the New Jersey Superior Court Appellate Division in *Foldi v. Jeffries*[11] examined the scope of the parent-child immunity doctrine with respect to the liability of parents for the negligent supervision of their children.[12]

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[8] *See, e.g.*, Skinner v. Whitley, 281 N.C. 476, 189 S.E.2d 230 (1972) (parental immunity applied in automobile accident case); *cf.* State Farm Mut. Auto. Ins. Co. v. Leary, 168 Mont. 482, 544 P.2d 444 (1975) (spousal immunity applied in automobile accident case). These courts agree that any societal changes since the creation of the parent-child immunity doctrine are negligible and do not warrant a policy change.

[9] For example, the California Supreme Court developed a standard holding parents to the conduct of a "reasonable parent" in Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (en banc). See *infra* text accompanying notes 43-46 for a discussion of the reasonable parent standard. Wisconsin's "legal obligations" standard stems from an interpretation of the exceptions to the parent-child immunity doctrine that its supreme court first enumerated in Goller v. White, 20 Wis. 2d 402, 122 N.W.2d 193 (1963). For a discussion of the Wisconsin approach to parent-child immunity, see *infra* text accompanying notes 47-54. The Wisconsin approach has been favorably discussed and adopted in varying degrees by numerous jurisdictions. *See, e.g.*, Hebel v. Hebel, 435 P.2d 8, 15 (Alaska 1967); Rigdon v. Rigdon, 465 S.W.2d 921, 923 (Ky. 1971); Plumley v. Klein, 338 Mich. 1, 8, 199 N.W.2d 169, 172-73 (1972); Grodin v. Grodin, 102 Mich. App. 396, 401-02, 301 N.W.2d 869, 871 (Ct. App. 1980); Foldi v. Jeffries, 182 N.J. Super. 90, 440 A.2d 58 (App. Div. 1981); Gross v. Sears, Roebuck & Co., 158 N.J. Super. 442, 386 A.2d 442 (App. Div. 1972); Felderhoff v. Felderhoff, 473 S.W.2d 928, 933 (Tex. 1971); *see also* W. PROSSER, *supra* note 2, § 122, at 867-68.

[10] A minority of jurisdictions has completely abrogated the immunity doctrine without limitation in negligence suits by unemancipated minor children against their parents. *See, e.g.*, Peterson v. City of Honolulu, 51 Hawaii 484, 462 P.2d 1007, 1009 (1970) (reasoning that restoration of family harmony is unlikely to be aided by prohibiting reparations because impairment of family relationship occurs when wrong is committed); Briere v. Briere, 107 N.H. 432, 224 A.2d 588 (1966); Rupert v. Stienne, 90 Nev. 397, 528 P.2d 1013 (1974).

[11] 182 N.J. Super. 90, 440 A.2d 58 (App. Div. 1981).

[12] Other jurisdictions have been directly confronted with the question whether parents should be immune from suit for failure to adequately supervise their children. In Holodook v. Spencer, 36 N.Y.2d 35, 50-51, 324 N.E.2d 338, 346, 364 N.Y.S.2d 859, 871-72 (1974), the Court of Appeals of New York determined that the parent owes his child no legal duty of supervision beyond minimal criminal standards, thus negligent supervision is not actionable. For an in-depth discussion of New York's position, see Hollister, *Parent-Child Immunity: A Doctrine in Search of Justification*, 50 FORDHAM L. REV. 489, 516-24 (1982). The Supreme Court of Idaho recently adopted the *Holodook* reasoning, finding the parent-child immunity doctrine bars actions by children for negligent supervision. Pedigo v. Rowley, 101 Idaho 201, 610 P.2d 560 (1980). It seems that Illinois would not permit actions for negligent supervision. Illinois courts immunize parental conduct for "mere negligence within the scope of the parental relationship." Illinois Nat'l Bank & Trust Co. v. Turner, 83 Ill. App. 3d 234, 236, 403 N.E.2d 1256, 1258 (App. Ct. 1980); *see also* Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 395 N.E.2d 538 (1979). Negligent parental supervision is actionable in Hawaii and Wisconsin. *See* Peterson v. City of Honolulu, 51 Hawaii 484, 462 P.2d 1007 (1970); Howes v. Hansen, 56 Wis. 2d 247, 201 N.W.2d 825 (1972); Cole v. Sears, Roebuck & Co., 47 Wis. 2d 629, 177 N.W.2d 866 (1970). Although the Supreme Court of Minnesota abrogated the parent-child immunity doctrine and adopted the "reasonable parent standard," it specifically found parents immune from suit for "negligent child rearing." Anderson v. Stream, 295 N.W.2d 595, 601 n.9 (Minn. 1980).

In *Foldi*, a two-and-one-half year old child momentarily wandered away from her mother, who was gardening and unaware of the child's absence.[13] While away from her mother, the child entered a neighbor's yard and was bitten by the neighbor's dog.[14] The mother later found the child bleeding and crying on a neighbor's driveway.[15] The infant, through a guardian *ad litem*,[16] sued the dog's owners, the Jeffries, who denied liability and filed a third-party complaint against the parents for indemnification.[17] Shortly thereafter, an amendment to the infant's complaint joined her parents as defendants, alleging their failure to reasonably supervise and adequately warn of dangers.[18] The Jeffries settled the initial claim before trial,[19] whereas, the parents secured summary judgment based on the parent-child immunity doctrine.[20] On appeal, Judge Antell affirmed the lower court's grant of summary judgment and held that the parent-child immunity doctrine protects parents from liability for the negligent supervision of their children.[21]

The foundation of the parent-child immunity doctrine is predicated upon "the great trilogy"[22] of American cases,[23] *Hewlett v.*

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[13] 182 N.J. Super. at 92, 440 A.2d at 59.

[14] *Id.*

[15] *Id.*

[16] *Id.* Suits involving parental immunity basically arise either when a child sues a tortfeasor who impleads or counterclaims against the child's parents for contribution, or when a child directly sues his parent in tort. In the latter case, a guardian *ad litem* is appointed because the interests of the child are deemed to be adverse to that of his parents. W. PROSSER, *supra* note 2, § 122, at 864 n.63. "A *guardian ad litem* is a special guardian appointed by the court to prosecute or defend, on behalf of an infant . . . , a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant . . . in the litigation." BLACK'S LAW DICTIONARY 635 (rev. 5th ed. 1979). With respect to parent-child litigation in New Jersey, a guardian *ad litem* can be formally appointed by the court on either its own motion or a verified petition. N.J. Ct. R. 4:26-2(2), (4). An infant under the age of 17 must have a friend verify and petition on his behalf. *Id.*

[17] 182 N.J. Super. at 92, 440 A.2d at 59.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 97-98, 440 A.2d at 62.

[22] Akers & Drummond, *Tort Actions Between Members of the Family—Husband & Wife—Parent & Child*, 26 Mo. L. REV. 152, 182 (1961). This phrase has been utilized by courts and commentators. *E.g.*, Hebel v. Hebel, 435 P.2d 8, 10 (Alaska 1967); Hollister, *supra* note 12, at 495; Comment *Parental Immunity*, *supra* note 2, at 602.

[23] Parent-child immunity has never been a part of English common law. *See* W. EVERSLEY, DOMESTIC RELATIONS 578 (3d ed. 1906); T. REEVE, DOMESTIC RELATIONS 387 (1816); Dunlap v. Dunlap, 84 N.H. 352, 356, 150 A. 905, 907 (1932); Annot., 19 A.L.R.2d 423, 425 (1951); *see also* W. PROSSER, *supra* note 2, § 122, at 865, in which he states that "[a]lthough there were no old decisions, the speculation on the matter has been that there is no good reason to think that the English law would not permit actions for personal torts . . . , subject always to the parent's

George,[24] *McKelvey v. McKelvey*,[25] and *Roller v. Roller*.[26] In 1891, the Supreme Court of Mississippi, in *Hewlett*, first articulated and applied the defense of parental immunity.[27] A girl, claiming she had been maliciously committed to an insane asylum by her mother, filed a false imprisonment action against her mother's estate for damages resulting from her commitment.[28] The court dismissed the case reasoning that "[s]o long as the parent is under an obligation to care for, guide and control, and the child is under a reciprocal obligation to aid and comfort and obey, no such action as this can be maintained."[29] Only the state, through its criminal process, may regulate parental violence.[30] Notwithstanding a lack of supporting authority, the *Hewlett* decision was followed as a well-settled rule twelve years later in *McKelvey*.[31] There, the Supreme Court of Tennessee refused to allow a child to sue her stepmother for alleged cruel and inhuman treatment inflicted upon her with her father's consent.[32] In reaching its decision, the court analogized to spousal immunity[33] and relied upon the parent's legal right to control and discipline the child.[34] Scaling the heights of absurdity, the *Roller* court denied a fifteen year old girl the right to institute a tort action against her father who had been convicted of raping her.[35] The court based its decision on an analogy to spousal immunity[36] and the idea that these civil actions contravene public policy, for they not only disrupt family tranquility but also debase societal mores.[37] The court ironically admitted that incestuous rape disturbed the family unit, but stated:

> [i]f it be established that a child has a right to sue a parent for tort, there is no practical line of demarkation [sic] which can be drawn, for the same principle which would allow the action in the case of a

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privilege to enforce reasonable discipline against the child." *Id.* Such actions have been recognized in Canada, *e.g.*, Deziel v. Deziel, [1953] 1 D.L.R. 651, and in Scotland, *e.g.*, Young v. Rankin, 1934 Sess. Cas. 499.

[24] 68 Miss. 703, 9 So. 885 (1891).

[25] 111 Tenn. 388, 77 S.W. 664 (1903).

[26] 37 Wash. 242, 79 P. 788 (1905).

[27] 68 Miss. at 711, 9 So. at 887.

[28] *Id.* at 707, 9 So. at 886.

[29] *Id.*

[30] *Id.*

[31] 111 Tenn. 388, 77 S.W. 664 (1903).

[32] *Id.* at 393, 77 S.W. at 665.

[33] *Id.* at 388-89, 77 S.W. at 664-65.

[34] *Id.* at 388, 77 S.W. at 664.

[35] 37 Wash. at 243, 79 P. at 788.

[36] *Id.* at 245, 79 P. at 789.

[37] *Id.* at 244, 79 P. at 789.

heinous crime, like the one involved in the case, would allow an action to be brought for any other tort.[38]

It was largely for these reasons, the potential disruption of family harmony and the difficulty of drawing a line between negligent and nonnegligent acts, that other states adopted the rule as enunciated in the "great trilogy," applying it to both intentional torts and negligence actions.[39] Today, a few states retain "absolute" parental immunity for negligence[40] while a few states have totally abrogated the parent-child immunity doctrine.[41] Most states have partially abrogated the doctrine.[42]

The Supreme Court of California abrogated the immunity in *Gibson v. Gibson*.[43] In *Gibson*, the court formulated a "reasonable parent" standard to determine whether and under what circumstances parents should be found liable for their negligence. Parental conduct is tested by asking "what would an ordinarily reasonable and prudent parent have done in similar circumstances?"[44] The *Gibson* court recognized the uniqueness of the parent-child relationship and calculated this factor into the standard.[45] Because a blind application of negligence concepts would be unacceptable and impracticable, this approach modifies the conventional test of reasonableness by accounting for the "parental role."[46]

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[38] *Id.*

[39] *E.g.*, Gillet v. Gillet, 168 Cal. App. 2d 102, 335 P.2d 736 (Ct. App. 1959) (parental immunity for intentional tort), *overruled*, Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (en banc); Trudell v. Leatherby, 212 Cal. 678, 300 P. 7 (1931) (parental immunity for negligence), *overruled*, Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (en banc); Hastings v. Hastings, 33 N.J. 247, 163 A.2d 147 (1960) (parental immunity for negligence),*overruled*, Small v. Rockfeld, 66 N.J. 231, 30 A.2d 335 (1974); Badigian v. Badigian, 9 N.Y.2d 472, 174 N.E.2d 718, 215 N.Y.S.2d 35 (1961) (parental immunity for negligence), *overruled*, Gelbman v. Gelbman, 23 N.Y.2d 434, 245 N.E.2d 192, 297 N.Y.S.2d 529 (1969).

[40] See *supra* note 8 and accompanying text.

[41] *See* cases cited *supra* note 7.

[42] For a survey of the status of the parent-child immunity doctrine in the United States, see Hollister, *supra* note 12, at 528-32 app.

[43] 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (en banc).

[44] *Id.* at 919, 479 P.2d at 653, 92 Cal. Rptr. at 295.

[45] *Id.*

[46] *Id.* at 919, 479 P.2d at 652-53, 92 Cal. Rptr. at 291 (1971). The exercise of certain parental authority over an unemancipated child would be tortious if directed against a third party, but spanking or temporarily confining a misbehaved child will not subject a parent to liability for battery or false imprisonment. *Id.* at 921, 479 P.2d at 625, 92 Cal. Rptr. at 292.

The reasonable parent standard reflects the belief that jurors should decide whether or not a person acted as a reasonable and prudent parent. *See* Anderson v. Stream, 295 N.W.2d 595, 601 (Minn. 1980). The standard assumes the capability of juries in applying a modified traditional negligence standard to adequately protect reasonable parental functions in the parent-child relationship. *Id.*

Falling in the middle of the parent-child immunity spectrum is the Wisconsin approach.[47] The Supreme Court of Wisconsin, in *Goller v. White*,[48] laid the groundwork in this area by abrogating parent-child immunity in all but two situations: "(1) Where the alleged negligent act involves an exercise of parental authority over a child; and (2) where the alleged negligent act involves an exercise of ordinary *parental discretion* with respect to the provision of food, clothing, housing, medical and dental services, and *other care*."[49] The *Goller* court did not define the parameters of these exceptions in its decision. The Supreme Court of Wisconsin construed the exceptions narrowly almost a decade later in *Thoreson v. Milwaukee & Suburban Transport Co.*[50] In *Thoreson*, the first exception was defined to mean discipline.[51] Interpreting the particular words "other care,"[52] the supreme court viewed the second exception of parental discretion as one embracing the parents' legal duties.[53] Parental discretion was not found to encompass the supervision or education of children because such acts differ from the legal obligations "of providing food, housing, clothing, dental and medical services."[54]

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[47] See Note, *supra* note 9, for a discussion of the impact of Wisconsin's approach on other jurisdictions.

[48] 20 Wis. 2d 402, 122 N.W.2d 193 (1963). Wisconsin was the first state to restrict parent-child immunity. In *Goller*, a 12 year old boy was injured after falling from the draw bar of a tractor against the protruding bolts of a wheel. *Id.* at 404, 122 N.W.2d at 193. Because the court left open the question of what constituted parental authority and ordinary parental discretion, it was not clear whether the exceptions protected the operator of the tractor who stood in *loco parentis* to the boy. *See id.* at 413, 122 N.W.2d at 198.

[49] *Id.* (emphasis added).

[50] 56 Wis. 2d 231, 201 N.W.2d 745 (1972). In *Thoreson*, a child was injured after dashing into the path of an oncoming vehicle. The mother's failure to supervise was found to be outside the exceptions, and thus actionable. *Id.* at 247, 201 N.W.2d at 753; *see also* Howes v. Hansen, 56 Wis. 2d 247, 201 N.W.2d 825 (1972) (mother's negligent supervision actionable where child was injured by another child operating a power mower); Cole v. Sears, Roebuck & Co., 47 Wis. 2d 629, 177 N.W.2d 866 (1970) (mother's supervision of child while playing on swing set found outside of exceptions, thus actionable).

[51] 56 Wis. 2d at 246-47, 201 N.W.2d at 753. This exception does not immunize negligent supervision. Hollister, *supra* note 12, at 514.

[52] The court's interpretation was rendered in accordance with the rule of *ejusdem generis*. 56 Wis. at 246-47, 201 N.W.2d at 753. This canon of statutory construction requires that "[w]here general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." C. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 47.17, at 103 (1973).

[53] 56 Wis. 2d at 246-47, 201 N.W.2d at 753.

[54] *Id.* at 247, 201 N.W.2d at 753. Although negligent supervision is not immunized, this approach still affords parents wide latitude in raising offspring, Comment, *Reasonable Parent Standard: An Alternative to Parent-Child Tort Immunity*, 47 U. COL. L. REV. 795, 807 (1976), by immunizing the execution of legal duties germane to the "health, morals and well-being" of

The *Goller* opinion eventually impacted upon New Jersey law, but until that time absolute parent-child immunity was invoked in negligence cases.[55] The Supreme Court of New Jersey adopted the immunity doctrine in *Reingold v. Reingold*.[56] In 1935, the unanimous *Reingold* court reasoned that preservation of peace, tranquility, and cohesiveness of the family unit outweighed any right an unemancipated child[57] might have to take action against his parents and possibly disrupt the family unit.[58] With this consideration in mind, Justice Perskie, writing for the court, denied a daughter recovery for damages incurred while riding as a passenger in an automobile owned by her stepmother and negligently operated by her father.[59]

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children. Cole v. Sears, Roebuck & Co., 47 Wis. 2d 629, 639, 177 N.W.2d 866, 869 (1970). When alleged negligence originates in areas other than legal obligations, however, the conduct of Wisconsin parents will presumably be tested by a standard of reasonableness. Comment, *The Reasonable Parent Standard: An Alternative to Parent-Child Tort Immunity: The Case for Abrogation of Parental Immunity in Florida*, 25 U. FLA. L. REV. 794, 807-08 (1973) [hereinafter cited as Comment, *Parental Immunity in Florida*].

[55] *See, e.g.*, Hastings v. Hastings, 33 N.J. 247, 163 A.2d 147 (1960), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970).

[56] 115 N.J.L. 532, 181 A. 153 (1935), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970).

[57] Today, eighteen is the age of majority in New Jersey, the time at which the right to sue and defend civil actions attaches. N.J. STAT. ANN. § 9:17B-1 (West Cum. Supp. 1982-1983). Emancipation, however, is not synonymous with majority. "Emancipation in its general sense signifies a surrender and renunciation of the correlative rights and duties touching the care, custody and earnings of the child." Limpert v. Limpert, 119 N.J. Super. 483, 440, 292 A.2d 38, 39 (App. Div. 1972); *see also* Schumm v. Schumm, 122 N.J. Super. 146, 149, 299 A.2d 423, 425 (Ch. Div. 1973). Prior to the attainment of majority there is a presumption against emancipation of a child, and the burden of establishing that status is on the party who asserts it. Alford v. Somerset County Welfare Bd., 158 N.J. Super. 302, 316, 385 A.2d 1275, 1278-79 (App. Div. 1978); Strauer v. Strauer, 26 N.J. Misc. 218, 222, 59 A.2d 39, 41 (Ch. Div. 1948). A child is not immediately emancipated upon reaching the age of majority, and there is in fact no age when emancipation automatically occurs. Newburgh v. Arrigo, 88 N.J. 529, 543, 443 A.2d 1031, 1037 (1982). When a person reaches 18 years of age, however, this fact constitutes *prima facie* evidence of emancipation. *Id.* At such time a child may elect to sever his relationships with his parents, but concurrence of the parent is not essential. Cafaro v. Cafaro, 118 N.J.L. 123, 191 A. 472 (1937). For examples of emancipation through other avenues, see Leith v. Horgan, 24 N.J. Super. 516, 518, 95 A.2d 15, 16 (App. Div. 1953) (child's marriage); Slep v. Slep, 43 N.J. Super. 538, 543, 129 A.2d 317, 329 (Ch. Div. 1957) (induction into military service); New Jersey D Y F S v. V, 154 N.J. Super. 531, 536-37, 381 A.2d 1241, 1243-44 (Juv. & Dom. Rel. Ct. 1977) (court order based on child's best interests). A compilation of the most frequently considered factors in a determination of emancipation can be found in Katz, Schroeder & Sidman, *Emancipating Our Children—Coming of Legal Age in America*, 7 FAM. L.Q. 211, 218 (1973) [hereinafter cited as Katz, *Emancipating Our Children*].

[58] 115 N.J.L. at 534-35, 181 A. at 154. The court relied principally on *Hewlett* and Small v. Morrison, 185 N.C. 577, 18 S.E. 12 (1923).

[59] 115 N.J.L. at 538, 181 A. at 156. The daughter was fully emancipated at the time of suit. She had suffered the injuries while unemancipated. *Id.* at 533, 181 A. at 154. The court framed the issue as whether an emancipated child may sue her parents for injuries which occurred during her infancy. *Id.* In dictum, the court indicated that an emancipated child may sue her parents in negligence if the cause of action arose after emancipation. *Id.* at 538, 181 A. at 156.

Confronting facts similar to those in *Reingold*, the New Jersey Supreme Court twenty-five years later in *Hastings v. Hastings*,[60] sustained the parent-child immunity doctrine in a four to three decision.[61] The *Hastings* court considered the fact that the parent was fully covered by automobile liability insurance and that any judgment against the parent would be paid by the insurer.[62] The court deemed payment by a party other than the parent irrelevant in light of its "belie[f] that true family life . . . should not include . . . the concept of recompensable fault between parents and unemancipated children."[63] The focus of the public policy underpinnings for immunity shifted from maintaining family harmony and resources to maintaining "integrity within the family,"[64] and avoiding collusion and fraud.[65] Recognizing that the insured parent would both participate in the decision to sue and desire that the child recover, the court sought to protect insurance carriers because it deemed collusion in making spurious claims an undeniable temptation when a family member is injured by an insured parent.[66] In addition, the court feared that a decision to permit actions in the context of automobile accidents would be a valid precedent to permit actions against parents for injuries suffered in the home.[67]

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[60] 33 N.J. 247, 163 A.2d 147 (1960), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970).

[61] Justice Jacobs wrote the dissenting opinion in which he asserted that the existence of automobile liability insurance in this case dispelled the notion that permitting the action would "endanger the family relationship or offend any policy based on its preservation." *Id.* at 256, 267 A.2d at 152 (Jacobs, J., dissenting). He also argued that the possibility of collusion and fraud provided "no just or moral basis for precluding honest and meritorious actions." *Id.* at 257, 267 A.2d at 153 (Jacobs, J., dissenting). The courts and juries, reasoned the dissenting justice, were capable of ferretting out fraudulent claims. *Id.* Recognizing the policy consideration that some parent-child tort actions might "undermine parental authority and discipline," *id.* at 258, 267 A.2d at 153 (Jacobs, J., dissenting), Justice Jacobs found that this case did not present such a problem. *Id.* Justice Jacobs' rationale was eventually adopted in France v. A.P.A. Transp. Co., 56 N.J. 500, 267 A.2d 490 (1970).

[62] 33 N.J. at 248, 163 A.2d at 150.

[63] *Id.* at 251, 163 A.2d at 150; *see* Franco v. Davis, 51 N.J. 237, 239-40, 239 A.2d 1, 2 (1968) (immunity precluded recovery on parents' automobile insurance policy even though daughter was adopted and had become emancipated by marriage); *cf.* Heyman v. Gordon, 40 N.J. 52, 53, 190 A.2d 670, 671-72 (1963) (immunity precluded wrongful death action against father for sole benefit of unemancipated son on grounds of alleged negligent driving which resulted in death of mother), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970).

[64] 33 N.J. at 253, 163 A.2d at 150.

[65] *Id.* This reasoning was later rejected in Gross v. Sears, Roebuck & Co., 158 N.J. Super. 442, 444, 386 A.2d 442, 443 (App. Div. 1978) (citing Immer v. Risko, 56 N.J. 482, 267 A.2d 481 (1970)). See also *infra* text accompanying notes 77-80.

[66] 33 N.J. at 252-53, 163 A.2d at 150.

[67] *Id.* at 251, 163 A.2d at 150.

Since the *Reingold* decision, the New Jersey courts have effected a number of exceptions to parent-child immunity.[68] An exception was carved to permit a suit by an unemancipated child against his parent's estate.[69] The rationale for this exception is that the death of a parent tortfeasor eliminates the threat of disturbance of family harmony and the danger of collusion.[70] Similarly, no strong state interest in maintaining a harmonious family unit remains once a child is legally emancipated.[71] Children can also sue for causes of action which are legislatively conferred. For example, New Jersey courts allowed an unemancipated child to invoke a strict liability statute in order to recover from his parents for a dog bite injury.[72] In addition, the New Jersey courts recognize suits against parents by unemancipated minor children in contract,[73] property,[74] and intentional tort actions.[75]

Although the foregoing exceptions effectively limited the *Reingold* doctrine, parental immunity retained vitality in New Jersey

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[68] The gradual erosion of New Jersey's parent-child immunity doctrine paralleled the demise of interspousal tort immunity. *See* Comment, *Intrafamilial Tort Immunity in New Jersey: Dismantling the Barrier to Personal Injury Litigation*, 10 RUT.-CAM. L.J. 661, 672 (1979). It is noteworthy that Immer v. Risko, 56 N.J. 482, 267 A.2d 481 (1970), the seminal case abrogating spousal immunity, and France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970), the seminal case abrogating parent-child immunity, were decided on the same day.

[69] Palesey v. Tepper, 71 N.J. Super. 294, 176 A.2d 818 (Law Div. 1962); *cf.* Long v. Landy, 35 N.J. 44, 171 A.2d 1 (1961) (wife permitted to sue husband's estate).

[70] Weinburg v. Underwood, 101 N.J. Super. 448, 451, 244 A.2d 538, 540 (Law Div. 1968); Palesey v. Tepper, 71 N.J. Super. 294, 299, 176 A.2d 818, 820-21 (Law Div. 1962).

[71] Weinburg v. Underwood, 101 N.J. Super. 448, 451, 244 A.2d 538, 540 (Law Div. 1968). Public policy is not served, in particular, when the complaining child is self-supporting and 30 years of age. *Id.* Certain authorities contend, however, that maintenance of the family structure in regard to emancipated children is a social value worth preserving. *See generally* Katz, *Emancipating our Children*, *supra* note 57.

[72] Dower v. Goldstein, 143 N.J. Super. 418, 363 A.2d 373 (Law Div. 1976). In *Dower*, parents were found not immune from a suit brought under N.J. STAT. ANN. § 4:19-16 (West 1973), imposing strict liability on dog owners, by their three year old child who had been bitten and seriously injured by their German Shepard. The possibility of collusion and fraud against insurance companies in dog bite cases was considered minimal. 143 N.J. Super. at 422, 363 A.2d at 375.

[73] *See* Hastings v. Hastings, 33 N.J. 247, 259 (1960) (Jacobs, J. dissenting), *overruled*, France v. A.P.A. Transp. Corp., 56 N.J. 500, 267 A.2d 490 (1970); *In re* Flash, 51 N.J. Super. 1, 29, 143 A.2d 208, 223 (App. Div.), *certif. denied*, 28 N.J. 38, 144 A.2d 907 (1958) (parent liable to minor children in action to recover profit or interest from trust fund expenditure contrary to law).

[74] The most acrimonious litigation over property arises among family members. McCurdy, *supra* note 2, at 1075. One commentator has taken the position that a child's person is certainly no less valuable and worthy of the law's protection than his property. Comment, *Tort Liability of a Parent to Minor Unemancipated Child for Willful and Wanton Acts*, 41 MARQ. L. REV. 188, 195 (1952). The court in Goller v. White, 20 Wis. 2d 402, 412, 122 N.W.2d 193, 197 (1963), adopted this reasoning.

[75] *E.g.*, Small v. Rockfeld, 66 N.J. 231, 30 A.2d 335 (1974) (child not precluded from recovery in wrongful death action against father who allegedly murdered or recklessly killed mother).

until 1970, when the supreme court overruled *Reingold*, *Hastings*, and their progeny in *France v. A.P.A. Transport Corp.*[76] As in *Reingold* and *Hastings*, the *France* court examined whether parental immunity should apply in the context of an automobile accident case.[77] Justice Proctor first acknowledged that *Hastings* had shifted the justification for parental immunity from the preservation of family harmony to avoidance of collusion and fraud,[78] then reasoned that all meritorious claims should not be barred simply to avoid the bringing of collusive suits.[79] The judicial system, observed the court, is capable of ferreting out fraudulent claims.[80]

While supporting the immunity's partial abrogation, the *France* court limited its holding to automobile injury cases.[81] It nonetheless noted by referring to the *Goller* exceptions "that there may be areas involving the exercise of parental authority and care over a child which should not be justiciable in a court of law."[82] Four years later, the Supreme Court of New Jersey in *Small v. Rockfeld*[83] cited these exceptions with apparent approval in holding that parental immunity terminates when parental authority and the adequacy of child care are not at issue.[84]

The *Goller* exceptions were ultimately embraced as the law of New Jersey by the appellate division in *Gross v. Sears, Roebuck & Co.*[85] In this case, a child recovered in a direct action against his father who injured him while operating a power lawn mower.[86] The court stated that the alleged negligence arose from the affirmative act of the parent mowing the lawn,[87] not from the exercise of parental authority.[88] The court discerned no difference between a parent's negligence in driving a car or pushing a lawn mower.[89] Thus, the

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[76] 56 N.J. 500, 267 A.2d 490 (1970).

[77] *Id.* at 503-04, 267 A.2d at 492.

[78] *Id.* at 505, 267 A.2d at 493.

[79] *Id.*

[80] *Id.*

[81] *Id.* at 507, 267 A.2d at 494.

[82] *Id.*

[83] 66 N.J. 231, 330 A.2d 335 (1974).

[84] *Id.* at 243, 330 A.2d at 342. In *Small*, the court permitted a grandmother, on behalf of her grandson, to bring a wrongful death action against her deceased daughter's spouse, alleging that he had either murdered the daughter or caused her death by his reckless conduct. *Id.* at 246, 330 A.2d at 344. For a survey of cases permitting wrongful death actions against a parent on behalf of a child for the death of the other parent, see Annot., 87 A.L.R.3d 849 (1978).

[85] 158 N.J. Super. 442, 447, 386 A.2d 442, 445 (App. Div. 1978).

[86] *Id.* at 444, 386 A.2d at 443.

[87] *Id.* at 447, 386 A.2d at 445.

[88] *Id.* at 448, 386 A.2d at 445.

[89] *Id.* at 446, 386 A.2d at 444.

father's act was not immunized.[90] Noting that the New Jersey court had not previously applied the *Goller* exceptions,[91] the appellate division suggested that the exceptions be strictly construed in the future.[92] In *Foldi v. Jeffries*,[93] the appellate division rendered its construction of the *Goller* exception which immunizes legal obligations and "other care."

The *Foldi* court briefly reviewed prior New Jersey law dealing with parent-child immunity,[94] specifically rejecting the rationale of *Convery v. Maczka*,[95] a New Jersey Law Division case involving substantially similar circumstances to *Foldi*.[96] *Convery* treated the parent as a "person with a special relationship imposing a duty towards a child"[97] and held that the parent could be found liable for negligent supervision.[98] The *Foldi* court refused to separate the immunity associated with parental care and authority from the duty to supervise which, in this type of situation, originates from the parent-child relationship.[99] Notwithstanding *Convery*, the *Foldi* court concluded that the decisive factor of the prior cases was not whether the exercise of parental care would have precluded a child's injury,[100] "but

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[90] *Id.* at 447, 386 A.2d at 445. The court viewed its decision as a mere extension of the *France* spirit. The court further suggested that a threshold issue of whether the immunity applies should be decided by the judge, not the jury, and the parent should bear the burden of coming forward with evidence to show that his conduct is within one of the *Goller* exceptions to sustain an immunity defense. *Id.* at 448, 386 A.2d at 445.

[91] *Id.* at 447, 386 A.2d at 445. In Fritz v. Anderson, 148 N.J. Super. 68, 371 A.2d 833 (Law Div. 1977), the alleged parental failure to supervise and control an infant to prevent him from wandering into a construction site, was held to fall "within the realm of parental authority and discretion," and thus was not actionable. *Id.* at 73, 371 A.2d at 835. Arguably, this court was the first to apply the *Goller* exceptions.

[92] 158 N.J. Super. at 447, 386 A.2d at 445.

[93] 182 N.J. Super. 90, 440 A.2d 58 (App. Div. 1981).

[94] *Id.* at 92-94, 440 A.2d at 59-61.

[95] 163 N.J. Super. 411, 394 A.2d 1250 (Law Div. 1978).

[96] 182 N.J. Super. at 93, 440 A.2d at 60. In *Convery*, the plaintiff fractured his arm when he jumped off a chair. 163 N.J. Super. at 413, 394 A.2d at 1252.

[97] 163 N.J. Super. at 417, 394 A.2d at 1253.

[98] *Id.*

[99] 182 N.J. Super. at 94, 440 A.2d at 60.

[100] It has been observed that in most cases involving the adequacy of parental supervision the child's injury might have been prevented had the parent supervised more closely. For example, the New York Court of Appeals stated in Holodook v. Spencer:

> We can conceive of few, if any, accidental injuries to children which could not have been prevented, or substantially mitigated, by keener parental guidance, broader foresight, closer protection and better example. Indeed, a child could probably avoid most physical harm were he under his parents' constant surveillance and instruction, though detriment more subtle and perhaps more harmful than physical injury might result. If . . . negligent supervision claims were allowed, it would be the rare parent who could not conceivably be called to account in the courts for his conduct toward his child, either by the child directly or by virtue of [other] procedures . . . .

Holodook v. Spencer, 36 N.Y.2d 35, 45-46, 324 N.E.2d 338, 343, 364 N.Y.S.2d 859, 867 (1974).

whether the parents' conduct was the causative agency of harm or created the foreseeable risk thereof and was negligent without reference to any duty of parental care."[101]

Judge Antell noted that *Foldi* did not involve an affirmative act.[102] He further stated, however, that every individual must answer for affirmative and nonaffirmative acts which proximately cause "reasonably foreseeable harm to others."[103] Therefore, the application of immunity may only occur after a "weighing of competing policies."[104] Realizing that the original justifications for immunity had been rejected and there were no authoritative statements delineating a consistent policy for a limited parent-child immunity, the *Foldi* court comprehensively examined several social considerations which weighed in favor of immunizing negligent supervision.[105]

The court first considered the immunity doctrine's premise—that one who wrongfully harmed another should not suffer the consequences of his act.[106] The New Jersey Legislature, noted the court, had addressed the problem in its legislative declaration accompanying the New Jersey Tort Claims Act.[107] With respect to sovereign immunity the legislature recognized the inherent unfairness of strictly applying the doctrine of sovereign immunity.[108] Yet, since " 'the area in which the government has the power to act for the public good is almost without limit,' "[109] the legislature found that the " 'government should not have the duty to do everything that might be done.' "[110] Finding the legislative pronouncement on governmental immunity relevant, the *Foldi* court stated that "as with the government, the area within which parents may act for the benefit of their children and to protect their safety is almost without limit."[111] Thus, "[p]arents like the government 'should not have the duty to do everything that might be done,' "[112] but rather parents should be permitted to exercise their own discretion.[113]

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[101] 182 N.J. Super. at 94, 440 A.2d at 60.

[102] *Id.*

[103] *Id.*, 440 A.2d at 60-61.

[104] *Id.* at 94-95, 440 A.2d at 61.

[105] *Id.* at 95-97, 440 A.2d at 61-62.

[106] *Id.* at 95, 440 A.2d at 61.

[107] N.J. STAT. ANN. § 59:1-2 (West 1982).

[108] 182 N.J. Super. at 95, 440 A.2d at 61; *see also* N.J. STAT. ANN. § 59:1-2 (West 1982).

[109] 182 N.J. Super. at 95, 440 A.2d at 61 (quoting N.J. STAT. ANN. § 59:1-2 (West 1982)).

[110] *Id.* (quoting N.J. STAT. ANN. § 59:1-2 (West 1982)).

[111] *Id.* at 96, 440 A.2d at 61.

[112] *Id.* (quoting N.J. STAT. ANN. § 59:1-2 (West 1982)).

[113] *Id.* The court stated that a recognition of actions for negligent supervision, education, or other areas in which parents must "weigh competing demands on their time, attention and resources" would assume parents were omnipresent, omnipotent, and omniscient in "guard[ing] their children from the ubiquitous threat of harm." *Id.*

A second justification for parental immunity stemmed from the difficulty that the court perceived in separating adequacy of supervision from nurturing.[114] The court observed that parental decisions concerning the amount of care most conducive to a child's "physical, moral, emotional and intellectual growth" incorporate "expectations and insights into the child's limitations and capabilities which are sensed from intimate association and which simply cannot be articulated."[115] These intangibles can neither be adequately conveyed to, nor properly evaluated by, a trier-of-fact in testing parental care for reasonableness.[116] As a result, the court found that public policy justified the retention of a limited immunity for parental mismanagement.[117]

In conclusion, Judge Antell reviewed the parent's purported negligent supervision as "so integrally involv[ing] the 'exercise of parental authority and care over a child' "[118] that it should be classified as a form of nurture comparable to the provision of "food, clothing, housing, medical and dental services."[119] He interpreted the *Goller* phrase, "other care," to include negligent supervision and safety instructions; therefore, the alleged activities were sheltered by the parent-child immunity doctrine.[120]

Whether or not a child's tort action against his parents is cognizable in court unfortunately depends more on the accident of jurisdictional residence than parental negligence. As an overall approach, New Jersey's standard embodied in the *Foldi* decision is superior to the other parent-child immunity standards. The inexcusable flaw of the "absolute" immunity approach is its refusal not only to place value on a child's bodily welfare, as opposed to his contractual or property

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[114] *Id.*

[115] *Id.* at 97, 440 A.2d at 62.

[116] *Id.*

[117] *Id.*

[118] *Id.* at 98, 440 A.2d at 62 (quoting *France*, 56 N.J. at 507, 267 A.2d at 490).

[119] *Id.*

[120] *Id.* It should be noted that the same conclusion was reached in Carey v. Davison, 181 N.J. Super. 283, 437 A.2d 338 (Law Div. 1981). *Carey*, decided a month before *Foldi*, involved an infant plaintiff who was struck by an automobile as she crossed the street. The defendant-driver counterclaimed against plaintiff's parents for contribution on a theory of negligent supervision. For purposes of his motion to dismiss the counterclaim the father admitted that he observed traffic flow and let his child cross the street. The court found that his actions fell within "the greater responsibility of supervising the child and were thus protected by the parent-child immunity doctrine." *Id.* at 290, 437 A.2d at 342. Moreover, the motion was granted because the court simply refused to recognize negligent supervision as a tort in New Jersey. *Id.* at 289-90, 437 A.2d at 342. The *Carey* court indicated, however, that it would not dismiss the counterclaim if amended to make allegations comparable to those asserted in *Convery*, instead of relying upon a mere allegation of negligent supervision. *Id.* at 292, 437 A.2d at 343-44.

rights,[121] but also its failure to acknowledge the pecuniary need of children who have neither insurance coverage nor parents willing to pay for extensive medical costs.

The "reasonable parent" standard, like the absolute immunity standard, is also subject to criticism.[122] First, any deviation in child-rearing practices from prevailing community standards because of differing ethnic, cultural, or religious practices preponderates in favor of judgments against parents.[123] The legitimacy of the judicial system is jeopardized when jury verdicts are returned patently tainted by individual juror's views of correct or model parenting.[124] This ingrained bias is not counter-balanced by precise instructions from the judge to the jury.[125] Second, when the tortfeasors are parents who hold an insurance policy, they will be required to submit their familial conduct to public scrutiny as a condition precedent to insurance recovery.[126] Third, uninsured or inadequately insured parents may refuse to litigate their child's claim for fear of vulnerability to a claim for contribution from tortfeasors who are permitted by procedural rules to implead parents on an allegation of negligent supervision.[127] In short, this standard obstructs access to the courts by threatening to question child-rearing methods, invade family privacy, and impose

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[121] *See* W. PROSSER, *supra* note 2, § 122, at 865, in which he notes that contractual and property actions against parents have always been part of the common law. See also *supra* notes 73 & 74 and accompanying text. The separate treatment of property and tort actions merely perpetuates an arbitrary and meaningless distinction. Briere v. Briere, 107 N.H. 452, 224 A.2d 588 (1966). Judicial protection of a minor's property rights should not be more zealous than the right of his person. *See Goller*, 20 Wis. 2d at 412, 122 N.W.2d at 197.

[122] *See* Pedigo v. Rowley, 101 Idaho 201, 610 P.2d 560, 564 (1980); Anderson v. Stream, 295 N.W.2d 595, 601-04 (Minn. 1980) (Rogosheske, J., dissenting); Holodook v. Spencer, 36 N.Y.2d 35, 46, 325 N.E.2d 338, 364 N.Y.S.2d 859, 868 (1974).

[123] Anderson v. Stream, 295 N.W.2d 595, 602-03 (Minn. 1980) (Rogosheske, J., dissenting). Application of a "standardized norm" to the parent-child relation would curtail parental discretion in allowing children to undertake responsibility and gain independence. Holodook v. Spencer, 36 N.Y.2d 35, 46, 324 N.E.2d 338, 346, 364 N.Y.S.2d 859, 868 (1974).

The possibility of impingement upon recognized constitutional rights should not be overlooked. The fundamental right of child rearing has been recognized in Wisconsin v. Yoder, 406 U.S. 205, 213-15 (1972). Moreover, freedom of choice in matters of family life is a liberty protected by the due process clause of the fourteenth amendment. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974).

[124] Anderson v. Stream, 295 N.W.2d 595, 602 (Minn. 1980) (Rogosheske, J., dissenting).

[125] *Id.* Years of conditioning and attitude development from a family relationship are never sufficiently undone by a few words. Assuming jury prejudices were controlled, however, the danger of collusion, which is greatly increased because parents are often the only witnesses capable of describing the circumstances under which their child was injured, continues to plague jurors in evaluating parental credibility. *Id.*

[126] *Id.*

[127] Anderson v. Stream, 295 N.W.2d 595, 603 (Minn. 1980) (Rogosheske, J., dissenting); Holodook v. Spencer, 36 N.Y.2d 35, 325 N.W.2d 338, 344, 364 N.Y.S.2d 859, 868 (1974).

financial liability.[128] A final problem with California's "reasonable parent" standard is that it burdens parents with the requirement of foreseeing all predicaments which their children could reasonably encounter. Unfortunately, the standard fails to account for situations which are dangerous for some children but not for others.[129] Individuality among children may be strangled because parents, in an effort to avoid tort liability, conform their child-rearing practices to the absolutism of a uniform, objective standard.

Jursidictions employing an absolute parent-child immunity stress the public policy of protecting parental functions, whereas jurisdictions employing a "reasonable parent" standard stress compensating children's injuries. These approaches fail to establish an essential equilibrium between these competing values. The New Jersey approach is superior because it respects the parental role by providing immunity for simple domestic negligence and compensates injured children by imposing liability for harm negligently inflicted apart from the parental role.

Although New Jersey adopted the *Goller* exceptions to parent-child tort immunity, the courts have not interpreted the "other care" exception in the same manner as Wisconsin. Wisconsin, unlike New Jersey, distinguishes between moral and legal obligations by holding parents liable for negligent supervision.[130] Wisconsin therefore punishes parents by subjecting negligent parental acts to tort liability, though such acts are not within the duties defined by law, but rather represent the parent's good intentions. New Jersey's immunization of moral as well as legal objections,[131] avoids a philosophically confusing area open to endless debate. In addition, the Wisconsin approach is saddled with the procedural difficulties of a dual step process of litigating such cases. This procedure requires an initial time-consum-

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[128] Anderson v. Stream, 295 N.W.2d 595, 602-03 (Minn. 1980) (Rogosheske, J., dissenting). Based upon these shortcomings, the "reasonable parent" standard has been held in general disfavor and consequently adopted in only one other jurisdiction. *See id.* The "reasonable parent" standard has found acceptance, however, in a multitude of commentary. *E.g.*, Comment, *Parental Immunity: California's Answer*, 8 IDAHO L. REV. 179, 187 (1971); Comment, *Parental Immunity in Florida*, *supra* note 54, at 801; Comment, *Tort Immunity in Massachusetts*, *supra* note 2, at 331; Comment, *supra* note 68, at 679.

[129] Absent blatantly negligent conduct, parents cannot foretell the bounds of objectively permissible conduct, especially today with children of younger ages engaging in activities once reserved for adults. *See, e.g.*, Dellno v. Pearson, 259 Minn. 452, 107 N.W.2d 859 (1961) (minor operating powerboat must be judged by same standard of care as adult).

[130] *See* Wisconsin cases cited *supra* note 50.

[131] See Comment, *The "Reasonable Parent" Standard: An Alternative to Parent-Child Tort Immunity*, 47 U. COL. L. REV. 795, 807-08 (1976) for a discussion concerning the distinction between moral and legal duties.

ing inquiry into whether parental conduct falls within the *Goller* exceptions before the issue of negligence is settled.[132] New Jersey, however, is not encumbered because its extension of a broader immunity disposes of the majority of cases at the initial inquiry.[133] In view of these above considerations, New Jersey's standard, which at first glance appears to mirror Wisconsin's "legal obligations" approach, is the preferable mode of tort resolution.

The *Foldi* decision is important because it recapitulates and further clarifies the *Gross* rationale: that parents should be liable to their children for negligent affirmative acts which are committed "without reference to any duty of parental care."[134] Thus, children may recover from their parents provided that the tortious act can be isolated from parental conduct. More importantly, *Foldi* succinctly sets forth public policy reasons that contravene the recognition of negligent supervision as a tort. The individuality of the parent-child relationship and the practicality of an appropriate range for parental discretion are strong factors supporting the *Foldi* decision. Parents cannot be expected to foresee and guard against all possible harm. Similarly, parents should have wide latitude in determining what is best for their children.

The New Jersey Supreme Court now has the opportunity to clarify the parent-child immunity doctrine in New Jersey. A consolidation of the reasoning in *Gross* and *Foldi* would serve this purpose. All acts within the *Goller* enumerated exceptions should continue to receive parental immunity. In addition, parental supervision and safety instruction should be classified as activity falling within the ambit of "other care," and thus, immunized. Children, therefore, would be permitted to recover only when the alleged parental negligence involved an affirmative act "without reference to any duty of parental care."[135]

Even though there is no panacea for suits in the area of parent-child immunity, New Jersey's approach equitably and rationally balances the need to protect children's bodily welfare with the need to protect parents' ability to raise their children. It is only hoped that the potential for a definitive statement, essential to long overdue guidance, be realized through the supreme court's utilization of *Foldi* as a vehicle to a larger end.

Robert P. Williams

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[132] *Id.*

[133] See *supra* note 90.

[134] 182 N.J. Super. at 94, 440 A.2d at 60.

[135] *Id.*