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Negligence: Minor Held to Adult Standard of Care While Operating a Motor Vehicle

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NEGLIGENCE: MINOR HELD TO ADULT STANDARD OF CARE WHILE OPERATING A MOTOR VEHICLE

Medina v. McAllister, 196 So. 2d 773 (3d D.C.A. Fla. 1967)

Operating his motor scooter on the public streets of Florida, plaintiff, age fourteen, collided with an automobile owned and operated by the defendant. Plaintiff brought an action based on the defendant's alleged negligence, and the trial court, in a jury verdict, rendered judgment for the defendant.

On appeal, plaintiff contended the trial judge erred in refusing to instruct the jury that the standard of care applicable to him as a minor should be more lenient than the standard applied to an adult. The Third District Court of Appeal HELD, "to accord more lenient standards to a minor than would be applied to an adult when judging his conduct in operating a motor vehicle . . . would be unrealistic, contrary to legislative requirements . . . and inimical to the safety of the public."[1] Judgment affirmed.[2]

The instant case is one of first impression in Florida since the standard of care applied to minors operating motor vehicles has not previously been determined in this state. Earlier Florida cases concerning activities other than the operation of motor vehicles embraced the general rule that children are not held to the same standard of care as adults.[3] This rule was justified by the assertion that it is undesirable to burden the normal development of a child with adult responsibilities that are beyond his capabilities.[4] Therefore, a minor had the "right" to have his age, experience, and immaturity considered as mitigating factors in the assessment of his conduct.[5] But now, in view of *Medina*, a minor surrenders this "right" when he operates a motor vehicle in the State of Florida.

The court did not explicitly define the criteria for determining when the adult standard of care should be applied to a minor. The court did, however, emphasize the licensing theory, which maintains that licensing statutes demonstrate a legislative intent that the operation of all motor vehicles be governed by a uniform standard of care. The language of the *Medina* holding states that if a minor is *old enough to obtain a driver's license*, and he assumes the responsibility of operating a motor vehicle, he is held to the adult standard of care.[6] The court again referred to the licensing rationale when it stated it would be contrary to legislative requirements "to accord more

1. 196 So. 2d at 774-75.

2. A motion for rehearing was denied on April 10, 1967. *Id.* at 773.

3. City of Jacksonville v. Stokes, 74 So. 2d 278 (Fla. 1954); Bagdad Land & Lumber Co. v. Boyette, 104 Fla. 699, 140 So. 798 (1932).

4. 79 U. PA. L. REV. 1153 (1931). *See* W. PROSSER, TORTS §32, at 157 (3d ed. 1964).

5. Larnel Builders, Inc. v. Martin, 110 So. 2d 649 (Fla. 1959); Bermudez v. Jenkins, 144 So. 2d 859 (3d D.C.A. Fla. 1962); McCain v. Bankers Life & Cas. Co., 110 So. 2d 718 (3d D.C.A. Fla. 1959).

6. 196 So. 2d at 774. Other jurisdictions such as California (Prichard v. Veterans Cab Co., 63 Cal. 2d 727, 408 P.2d 360, 47 Cal Rptr. 904 (1965)), New Hampshire (Daniels v. Evans, 224 A.2d 63 (N.H. 1966)), New Mexico (Adams v. Lopez, 75 N.M. 503, 407 P.2d 50 (1965)), and Tennessee (Powell v. Hartford Accident & Indem. Co., 398 S.W.2d 727 (Tenn. 1966)) have recognized this rationale, which might be described as the "licensing theory."

lenient standards to a minor than would be applied to an adult when judging his conduct in operating a motor vehicle . . . ."[7]

Although the present decision was influenced by the licensing theory, the court did not confine future application of the adult standard of care to situations in which the minor either has, or is old enough to obtain, a driver's license. Such a limitation would not provide adequate public protection; minors are allowed to operate self-propelled "vehicles" such as motor boats without an operator's license. More significantly, judicial reliance on mere licensing theory would disregard the obvious hazard — the minor who is *too young to obtain a license* and nevertheless operates a motor vehicle. The logic of the licensing theory indicates that such unlicensed juveniles might escape imposition of the adult standard of care. Therefore, the *Medina* court indicated it would not allow any minor, regardless of age or status, to escape adult liability while operating a motor vehicle on the public streets of Florida. Other jurisdictions similarly apply the adult standard of care to minors engaged in activities which normally are undertaken by adults and require adult capabilities.[8] Respected authority also has indicated that judicial concern is not with ability to be licensed, but with the *adult nature* of the activity in question as a prerequisite to the imposition of the adult standard of care.[9] Operation of a motor vehicle unquestionably is such an activity.[10]

This view of the court's rationale suggests that the *Medina* doctrine will be extended to activities other than the operation of motor vehicles. Although neither *Medina* nor its cited authorities specify such activities, it is significant that the court does not narrowly limit its decision to the operation of motor vehicles; rather it states that minors are to be held to the adult standard of care when operating "a potentially dangerous instrumentality."[11]

The court further states that minors are to be afforded the lesser standard of care only when they are "engaged in activities fitting their age . . . or . . . [in] childish pursuits . . . ."[12] This language raises the obvious difficulties of determining what constitutes a "potentially dangerous instrumentality" and ascertaining which activities are not "childish pursuits." Firearms have already been described as "dangerous instrumentalities" by Florida courts[13] and would, therefore, be immediately included in the "potentially dangerous" category. The judiciary, however, has been slow to extend the "dangerous instrumentality" label beyond motor vehicles and firearms. Nevertheless, explosives — dynamite and highly volatile chemicals — seem just as "potentially dangerous"

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7. 196 So. 2d at 774.

8. Prichard v. Veterans Cab Co., 63 Cal. 2d 727, 408 P.2d 360, 47 Cal. Rptr. 904 (1965); Daniels v. Evans, 224 A.2d 63 (N.H. 1966); Adams v. Lopez, 75 N.M. 503, 407 P.2d 50 (1965). *See* Powell v. Hartford Accident & Indem. Co., 398 S.W.2d 727 (Tenn. 1966).

9. W. PROSSER, TORTS §32, at 159 (3d ed. 1964).

10. In regard to this activity, the court in *Medina* ruled that the adult standard of care was applicable to minors regarding contributory negligence, as well as primary negligence. 196 So. 2d at 774.

11. *Id.*

12. *Id.*

13. Skinner v. Ochiltree, 148 Fla. 705, 5 So. 2d 605 (1941).

as firearms and motor vehicles. Certainly these items are not ordinary objects of "childish pursuit," and when they are involved there is little reason for holding minors to a lesser degree of care than adults. Despite this, minors traditionally have been afforded considerable protection by not being held to the adult standard of care. *Medina's* departure from this longstanding authority can be explained by the fact that it is a policy decision, born of public necessity. The number of motor vehicles in the United States has increased radically within recent years. A substantial portion of this increase is because scooters, motorcycles, motorboats, and automobiles have become readily accessible to minors. Consequently, traffic accidents continue to increase,[14] and a disproportionate number of these accidents involve minors.[15] These circumstances have forced courts to resort to more expedient considerations. *Medina* weighed the interests of the involved minor against those of public welfare and concluded that the minor must suffer the burden of adult responsibility. This policy-oriented decisionmaking indicates that *Medina* may be the first of a series of such decisions extending the adult standard of care to minors, not only when they operate motor vehicles but when they engage in any "potentially dangerous activity" that is not "fitting their age."

The rule expounded in *Medina* should become accepted, established Florida law. A leading authority in tort law has recognized the need to hold minors to an adult standard of care while operating motor vehicles.[16] In addition, judicial sentiment throughout the United States indicates that the modern trend is to apply the adult standard of care to minors under similar circumstances.[17] Significantly, the Florida Supreme Court has, in effect, affirmed the *Medina* doctrine and indicated that its rationale might be extended to other areas of "adult activity." Such inference is warranted by the fact that the recently approved jury instructions for Florida negligence cases recommends that minors be held to an adult standard of care while engaged in an "adult activity."[18]

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14. In 1959 the number of highway accidents totaled 10,200,000. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1960). In 1965 the total reached 13,200,000—an increase of almost 30%. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1966).

15. In 1959 drivers under the age of 20 represented 7.2% of the total drivers in the United States, 11.6% of the drivers involved in fatal accidents, and 13% of the drivers involved in all accidents. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 53 (1960). By 1965, drivers under the age of 20 represented 9.8% of the total drivers, 15.5% of the drivers involved in fatal accidents, and 16.5% of the drivers involved in all accidents. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 54 (1966). These disparities were the most glaring of all age groups represented.

16. W. PROSSER, TORTS §32, at 159 (3d ed. 1964).

17. Research shows that at least sixteen states have held to this effect regarding primary negligence: Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, New Mexico, Ohio, Oregon, South Dakota, Texas, and Utah. In addition, at least seven states have reaffirmed this doctrine regarding contributory negligence: Arkansas, California, Florida, Georgia, Indiana, Missouri, and Tennessee.

18. On April 19, 1967, the Florida Supreme Court approved the committee's proposals. In that section entitled *Negligence* §4—"Negligence of a Child," the committee noted that the general charge regarding the negligence of a minor "may not be applicable when the claim involves the negligence of a child occurring while he is engaged in an activity normally