

Legal Dimensions

Joseph M. Desmond, *Partner*

Mass. Appeals Court Rules on Parents' Liability for Negligence of Minor Children

In *Cooke v. Lopez*, 57 Mass. App. Ct. 703 (2003), the Massachusetts Appeals Court issued a favorable ruling that reinforces the limited circumstances under which liability may be imposed on a parent for the acts of a minor child.

The Appeals Court held that there was insufficient evidence as a matter of law to support a jury's finding that the defendant parent was responsible for the negligence of her 15 year-old daughter in the operation of a motor vehicle resulting in personal injuries to the daughter's passenger.

At the time of the accident, Kristin Lopez was 15 and lived with her mother, Christie, who was the registered owner of two automobiles: a Mazda and a Ford Mustang. Kristen was unlicensed, but had driven the Mustang without her mother's permission one time prior to the subject accident. On that occasion, Kristen had found the car keys in her mother's bedroom drawer. Her mother had no knowledge of this incident.

Kristin had also driven the Mazda on one other occasion without her mother's permission prior to the accident. Mrs. Lopez caught her that time because she had been home when Kristin pulled into the driveway. Mrs. Lopez was angered by this breach of trust and grounded Kristen. Kristen promised her mother that she would never do it again. At trial, Mrs. Lopez testified that she did not believe that her daughter would take the car again.

Upon learning that Kristin had taken the car keys from her dresser

drawer, Mrs. Lopez started keeping the extra keys in her purse, although she sometimes left the keys to the Mustang in a desk drawer to permit Kristin's older sister, who had a driver's license, to use the vehicle.

On November 28, 1996, Kristin took the Mazda, again without her mother's permission, finding the keys in her mother's drawer. She picked up the plaintiff, Danielle Cooke and three other friends, and drove to various locations in Sandwich and Hyannis. Hurrying to have the car home before her mother returned from a family visit, Kristin headed home with the four passengers. On the way home, she drove into a tree and Cooke was seriously injured.

The plaintiff brought suit against Kristin as well as Mrs. Lopez, alleging negligent supervision of her minor child and negligent failure to secure the vehicle from being used by Kristin. Kristin was defaulted for failing to defend. Following the trial on the merits, a jury found that Mrs. Lopez was negligent, assigning 75% of the negligence to her. The jury assigned 25% comparative negligence to the plaintiff. The trial judge denied the defendant's motion for judgment notwithstanding the verdict.

The Appeals Court reversed the decision, finding that there was insufficient evidence to support the jury's verdict. While the Appeals Court acknowledged that parents have a duty to exercise reasonable care to prevent their minor children from intentionally or negligently inflicting harm on others, it said this duty arises "when the parent knows

or should know of the child's propensity for the type of harmful conduct complained of, and has an opportunity to take reasonable corrective measures."

Accordingly, in order to prove a claim of negligent supervision, the plaintiff must show the parent's awareness of "a dangerous tendency"; "a propensity for reckless or vicious behavior"; or a "propensity for a particular type of harmful conduct" on the part of the child, as well as a lack of appropriate action on the part of the parent.

In reviewing the evidence at trial, the Appeals Court determined that there was insufficient evidence to support a finding that Mrs. Lopez was aware of a dangerous propensity or tendency.

Rather, the evidence proved that Mrs. Lopez was only aware of a single incident in which her daughter commanded the vehicle without permission. The Court stated that knowledge of a single incident was insufficient to carry the plaintiff's burden of proving that the parent had knowledge of a "propensity" for a particular type of harmful conduct. The same reasoning was applied by the Court to dispose of the plaintiff's claim for failing to secure the car keys.

The *Cooke* case demonstrates the difficulty in proving a claim of negligent supervision against a parent. Massachusetts law remains clear that a parent may not be exposed to civil liability for the torts of their children simply by virtue of their parenthood, or by virtue of leaving an extra set of car keys in the house. □