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Torts—Abrogation of Parental Immunity—Anderson v. Stream, 295 N.W.2d 595 (Minn. 1980)

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**Torts—ABROGATION OF PARENTAL IMMUNITY—Anderson v. Stream, 295 N.W.2d 595 (Minn. 1980).**

Parental immunity is a judicially created rule that denies minor children a cause of action in tort against their parents. In the last eighteen years the doctrine has been attacked in the courts resulting in a trend toward its judicial abrogation. In the 1968 case of Silesky v. Kelman the


2. See, e.g., Goller v. White, 20 Wis. 2d 402, 122 N.W.2d 193 (1963); see also 6 WM. MITCHELL L. REV. 219, 221 n.11 (listing 21 states that have abrogated parent-child tort immunity in whole or in part). Wisconsin was one of the first jurisdictions to substantially limit parental tort immunity.

3. Jurisdictions eliminating parent-child tort immunity have adopted four main approaches to abrogation: total abrogation, see, e.g., Peterson v. City of Honolulu, 51 Hawaii 484, 486, 462 P.2d 1007, 1008 (1969); Rupert v. Stienne, 90 Nev. 397, 405, 528 P.2d 1013, 1017-18 (1974); the reasonable parent standard, see, e.g., Gibson v. Gibson, 3 Cal. 3d 914, 921, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 293 (1971) (the reasonable parent standard recognizes a parent’s prerogative and duty to exercise authority over his minor child, but within reasonable limits); abrogation except for activities associated with family relationships or objectives, see, e.g., Schenk v. Schenk, 100 Ill. App. 2d 199, 206, 241 N.E.2d 12, 15 (1968) (immunity is preserved “for conduct of either a parent or child arising out of the family relationship and directly connected with the family purposes and objectives”); and, abrogation with specific exceptions, see, e.g., Goller v. White, 20 Wis. 2d 402, 413, 122 N.W.2d 193, 198 (1963) (abrogated immunity except “(1) where the alleged negligent act involves an exercise of parental authority over the child; and (2) where the alleged negligent act involves an exercise or ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care”); see also Streenz v. Streenz, 106 Ariz. 86, 89, 471 P.2d 282, 285 (1970) (discusses parental immunity generally indicating Wisconsin standard persuasive but not specifically adopted because it was unnecessary to decide instant case); Plumley v. Klein, 388 Mich. 1, 8, 199 N.W.2d 169, 172-73 (1972) (adopts hybrid of Gibson and Goller, adding reasonableness to modify parental authority in first Goller exception).
Minnesota Supreme Court substantially limited the doctrine of parental immunity by recognizing it only when the parent was exercising reasonable authority over the child or when the parent was providing for the child's physical needs.\(^5\) In \textit{Anderson v. Stream}\(^6\) the Minnesota Supreme Court totally abolished the doctrine of parental immunity and became the second jurisdiction to adopt the reasonable parent standard for parent-child negligence cases.\(^7\)

In \textit{Anderson} the defendants lived next door to the plaintiffs and both families shared a common driveway. On the day of the accident, the plaintiff, a twenty-three-month-old child, was playing outdoors while her parents remained inside.\(^8\) About ten to fifteen minutes after she had begun to play the child was injured when the defendant backed her car

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4. 281 Minn. 431, 161 N.W.2d 631 (1968).


\textit{Bell} involved negligent parental supervision. Since the Minnesota Supreme Court had not addressed the issue of negligent parental supervision of children, the Federal District Court was forced to predict what the Minnesota court would decide. The Federal District Court concluded that negligent parental supervision came within the purview of the first \textit{Silesky} exception regarding parental authority. In \textit{Ourada}, the Minnesota Supreme Court found that a father’s failure to maintain a stairway came within the second \textit{Silesky} exception regarding parental discretion with respect to housing. In \textit{Cherry} the Minnesota court found that parental negligence allowing an infant to place an electrical extension cord in her mouth came within the second \textit{Silesky} exception.

6. 295 N.W.2d 595 (Minn. 1980). \textit{Anderson} was consolidated for appeal with the case of \textit{Nuessle v. Nuessle}. In \textit{Nuessle} the plaintiff, a three-year-old boy, accompanied his father on an errand to a drugstore. The father entered the drugstore and after 10 to 15 seconds noticed his son was not with him. After looking briefly in the store, the father saw his son crossing the street. The father hurried outside and yelled to his son. The child turned toward his father and recrossed the street. The child was struck by an automobile and sustained serious injuries. An action was commenced by plaintiff’s mother as guardian ad litem for damages against the father. Defendant moved for summary judgment on the ground that the parental immunity doctrine barred his son’s claims. The trial court granted the motion, ruling that the first \textit{Silesky} exception was applicable. On appeal, the Minnesota Supreme Court reversed both \textit{Anderson} and \textit{Nuessle} for retrial.

7. 295 N.W.2d at 601.

8. \textit{Id.} at 596. The child asked her parents if she could play outside. The parents acquiesced and instructed the child to stay in the back yard.
over the child's leg. After the accident the child was found sitting partially on the defendants' grass and partially on the part of the driveway closest to the defendants' house. Plaintiff's father, as guardian for his minor daughter and in an individual capacity, brought an action for the damages resulting from the child's injury. Defendants impleaded the child's parents for contribution and indemnity. The parents moved for summary judgment on the third-party complaint, claiming they were immune from liability. The district court dismissed the third-party complaint on the ground that the parents were immune from claims brought by their children.

The preliminary issue in Anderson was whether the Silesky exceptions to the abrogation of parent-child immunity should be retained. These exceptions preserved parental immunity "(1) where the alleged negligent act involves an exercise of reasonable parental authority over the 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." Because the precise scope of the Silesky exceptions was not clear, the Anderson court believed that the application of the exceptions allowed for too much discretion. Furthermore, the possibility of broadly varying

9. Id. Before the child was injured she was observed twice by her mother. The first time the child was playing by the back step. The second time the child had moved towards the front of the house.
10. Id.
11. Id.
12. Id. An essential element for contribution in a tort action is a common liability of joint tort-feasors to an injured party. "Common liability exists if two defendants are independently liable to the plaintiff for the same damages." Johnson v. Serra, 521 F.2d 1289, 1297 (8th Cir. 1975); see, e.g., Hart v. Cessna Aircraft Co., 276 N.W.2d 166, 168 (Minn. 1979); Lambertson v. Cincinnati Corp., 114, 122-27, 257 N.W.2d 679, 683-88 (1977).
13. 295 N.W.2d at 596-97. The district court held that the parent's negligent supervision fell within the Silesky exceptions. See Brief for Appellant at A-12, Anderson v. Stream, 295 N.W.2d 595 (Minn. 1980).
14. 295 N.W.2d at 596. A number of other issues were raised on appeal. Those issues included whether the parent's conduct constituted an "affirmative act of negligence", whether the parent's conduct involved parental supervision, whether parental supervision qualified as an exercise of "parental authority" under the first Silesky exception, and, solely in regard to the Anderson appeal, whether the parent's alleged act involved an exercise of parental discretion with respect to the provision of housing under the second Silesky exception. Id. at 597. After adopting the reasonable parent standard, the court found it unnecessary to decide these issues. The issues raised but not decided are indicative of the difficulties in applying the Silesky exceptions. See, e.g., infra note 16.
16. Id. at 598. The type of arbitrary distinction which the Anderson court referred to can be found by looking at five decisions of the Wisconsin Supreme Court in applying the second Goller exception from which the Silesky exceptions were derived. In Lemmen v. Servais, 39 Wis. 2d 75, 158 N.W.2d 341 (1968), the Wisconsin court was faced with the question, whether a parent's failure to instruct his child about safety procedures for departing from a school bus constituted an exercise of ordinary parental discretion with
interpretations of the terms "reasonable" and "ordinary," as used in the *Silesky* exceptions, concerned the court. The *Anderson* court reasoned that a literal interpretation of both terms could mean that a parent was immune from liability only in circumstances where he was not negligent, clearly contrary to the intention of the *Silesky* court. The *Anderson* court concluded that the *Silesky* exceptions were "not very helpful" and created "the potential for arbitrary decisionmaking in the area."

The *Anderson* court stated that the weaknesses associated with the *Silesky* exceptions are overcome by adoption of the reasonable parent standard: "What would an ordinarily reasonable and prudent parent have done in similar circumstances?" The reasonable parent standard allows the parent discretion in exercising his parental duties, but avoids respect to "other care." The court concluded that the parents were immune. Three other Wisconsin cases involved alleged parental negligence in the failure to supervise a child outside of the home. In each case the court held that parental supervision of a child's play did not constitute an exercise of parental discretion with respect to "other care." See *Howes v. Hansen*, 56 Wis. 2d 247, 201 N.W.2d 825 (1972) (mother held liable for negligent supervision of child by permitting him to wander into front yard where he was injured by power mower); *Thoreson v. Milwaukee & Suburban Transp. Co.*, 56 Wis. 2d 231, 201 N.W.2d 745 (1972) (two-year-old child left alone in living room by mother wandered into street where he was struck by bus); *Cole v. Sears Roebuck & Co.*, 47 Wis. 2d 629, 177 N.W.2d 866 (1970) (parent liable for failure to supervise child on swing set). The need to engage in fine line-drawing that is imposed by the exceptions is revealed by *Thomas v. Kells*, 53 Wis. 2d 141, 191 N.W.2d 872 (1971). In *Thomas* the child fell down a staircase at the rear of the family home. The crucial question, unresolved by the court because of a lack of essential facts, was whether the stairway was part of the family's home. If the stairway was found to be within the family domicile, parental immunity would apply because supervision of the child would be an exercise of ordinary parental discretion with respect to the provision of "housing." The case was remanded for determination of whether the stairway was part of the father's home. The exception involving ordinary parental discretion with respect to the provision of "housing" has been considered by the Minnesota Supreme Court. See *Cherry v. Cherry*, 295 Minn. 93, 203 N.W.2d 352 (1972).


17. 295 N.W.2d at 598.
18. *Id.* The court reasoned that the first exception would not preclude liability if the parent acted "unreasonably" in exercising his parental authority. This construction would be co-extensive with the conclusion that the parent was negligent. Thus, "a literal interpretation of the modifier 'reasonable' would mean that a parent is immune from liability only in situations where he is non-negligent in exercising his parental authority. This result... would provide no real immunity and thus makes a sham of the first exception." *Id.* The use of the term "ordinary" in the second exception creates a similar problem. *Id.*
19. *Id.*
20. *Id.; see also* *Gibson v. Gibson*, 3 Cal. 3d 914, 922, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 293 (1971) (*Goller* view would result in drawing of arbitrary distinctions).
21. 295 N.W.2d at 598 (emphasis omitted).
the interpretive problems associated with the *Silesky* exceptions. The court viewed the reasonable parent standard as advancing the public policy interest of affording a right for a wrong. In addition the reasonable parent standard places responsibility on and allows contribution from persons engaging in unreasonable injury-causing conduct.

Another factor that influenced the court's decision is the prevalence of liability insurance. The *Anderson* court believed that the wide-spread presence of homeowner's and renter's liability insurance, even though not statutorily mandated, was an important characteristic of modern society that would help effectuate the court's objective of compensation for injured children.

The crucial question before the *Anderson* court was whether or not parental authority and discretion could be effectively protected by the reasonable parent standard. In considering this question, the Minnesota court looked to California, the first state to adopt the reasonable parent standard. In the 1971 case of *Gibson v. Gibson* the California Supreme

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23. 295 N.W.2d at 600.

24. *Id.* at 598. The *Anderson* court did not reject the underlying rationale of *Silesky* insofar as the maintenance of parental discretion and discipline were concerned, but rather objected to the fact that *Silesky* immunized all parental actions falling within the scope of the two exceptions. Furthermore, the court reasoned that the reasonable parent standard would avoid the interpretive pitfalls associated with the *Silesky* exceptions. *Id.* at 599; see also Article, *The Vestiages of Child-Parent Tort Immunity*, 6 *U.C.D. L. Rev.* 195, 202-04 (1973); Note, *Gibson v. Gibson*: *A Further Limitation on California's Parent-Child Tort Immunity Rule*, 23 *Hastings L.J.* 588, 594 (1972).

25. 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971). In *Gibson* a father instructed his 10-year-old son to enter a roadway to correct the wheels of a jeep being towed by the father. While following the directions, the son was struck by another vehicle. The *Gibson* court refused to adopt the *Goller* exceptions and instead adopted the "reasonable parent" standard as a means of abrogating parental immunity. *Id.* at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293. Since the court's adoption of the "reasonable parent" standard in 1971, the standard has remained unchallenged in California. In fact, *Gibson* has been cited by the California courts as favoring abrogation of common-law tort rules in which the underlying policy considerations for the rule no longer exist. See, e.g., *Bernhard v. Harrah's Club*, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976) (extending abrogation of liquor liability); *Rodriguez v. Bethlehem Steel Corp.*, 12 Cal. 3d 382, 525 P.2d 669, 115 et al.: Torts—Abrogation of Parental Immunity—Anderson v. Stream, 295 N.W.2d 600.


27. 295 N.W.2d at 600.

28. *Id.* at 598. The *Anderson* court did not reject the underlying rationale of *Silesky* insofar as the maintenance of parental discretion and discipline were concerned, but rather objected to the fact that *Silesky* immunized all parental actions falling within the scope of the two exceptions. Furthermore, the court reasoned that the reasonable parent standard would avoid the interpretive pitfalls associated with the *Silesky* exceptions. *Id.* at 599; see also Article, *The Vestiages of Child-Parent Tort Immunity*, 6 *U.C.D. L. Rev.* 195, 202-04 (1973); Note, *Gibson v. Gibson*: *A Further Limitation on California's Parent-Child Tort Immunity Rule*, 23 *Hastings L.J.* 588, 594 (1972).

29. 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971). In *Gibson* a father instructed his 10-year-old son to enter a roadway to correct the wheels of a jeep being towed by the father. While following the directions, the son was struck by another vehicle. The *Gibson* court refused to adopt the *Goller* exceptions and instead adopted the "reasonable parent" standard as a means of abrogating parental immunity. *Id.* at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293. Since the court's adoption of the "reasonable parent" standard in 1971, the standard has remained unchallenged in California. In fact, *Gibson* has been cited by the California courts as favoring abrogation of common-law tort rules in which the underlying policy considerations for the rule no longer exist. See, e.g., *Bernhard v. Harrah's Club*, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976) (extending abrogation of liquor liability); *Rodriguez v. Bethlehem Steel Corp.*, 12 Cal. 3d 382, 525 P.2d 669, 115...
Court held that a minor child could maintain an action for negligence against his parent and that the test for parental conduct would be one of reasonableness in light of the parental role.\textsuperscript{30} The plaintiff in \textit{Gibson} was a minor who brought suit against his father to recover damages resulting from the father's negligence.\textsuperscript{31} The \textit{Gibson} court first analyzed the problems that might arise from abrogation of parent-child immunity.\textsuperscript{32} The court recognized that the parent-child relationship is unique and that the traditional concepts of negligence cannot be applied blindly.\textsuperscript{33} The \textit{Gibson} court nevertheless chose not to follow jurisdictions that had retained parental immunity in some limited form. Exceptions to total abrogation were viewed as giving the parent "carte blanche" to act negligently toward his child.\textsuperscript{34} Therefore, the \textit{Gibson} court established the reasonable parent standard as the proper test for parental conduct.\textsuperscript{35} The same reasoning was used by the \textit{Anderson} court to support its adoption of the reasonable parent standard.\textsuperscript{36}

The dissenting justices in \textit{Anderson} objected to the reasonable parent standard because of juror bias resulting from the personal experiences of jurors as parents and children.\textsuperscript{37} Jurors arguably would substitute their own views of proper child-rearing practices for the law.\textsuperscript{38} The dissent also thought the application of the reasonable parent standard would invade family privacy because third parties could implead parents on

\begin{itemize}
  \item \textit{30.} 3 Cal. 3d at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293.
  \item \textit{31.} \textit{Id} at 916, 479 P.2d at 648-49, 92 Cal. Rptr. at 288-89.
  \item \textit{32.} \textit{Id} at 919-21, 479 P.2d at 651-52, 92 Cal. Rptr. at 290-93. The \textit{Gibson} court discussed the traditional arguments advanced for the parental immunity rule, such as danger to family harmony, fear of collusion and fraud, and threats to parental authority. The only argument that the court found to be valid was the threat to parental authority. \textit{Id} at 920, 479 P.2d at 652, 92 Cal. Rptr. at 292.
  \item \textit{33.} \textit{Id} at 921, 479 P.2d at 652, 92 Cal. Rptr. at 292.
  \item \textit{34.} \textit{Id}., 479 P.2d at 652-53, 92 Cal. Rptr. at 292-93. The \textit{Gibson} court recognized that the parent-child relationship was unique and that traditional concepts of negligence could not be blindly applied. However, the court reasoned that the implication of \textit{Goller} would allow the parent to act negligently toward his child without liability if the parental conduct fell within the scope of the exceptions. The \textit{Gibson} court observed, "although a parent has the prerogative and the duty to exercise authority over his minor child, this prerogative must be exercised within reasonable limits. The standards to be applied is the traditional one of reasonableness, but viewed in light of the parental role." \textit{Id}, 479 P.2d at 653, 92 Cal. Rptr. at 293.
  \item \textit{35.} \textit{See id} at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293.
  \item \textit{36.} 295 N.W.2d at 598-99.
  \item \textit{37.} \textit{Id} at 602 (Rogosheske, J., dissenting). The dissent reasoned that most jurors have strong views in this area due to their personal experiences. \textit{Id}.
  \item \textit{38.} \textit{Id}.
\end{itemize}
claims of parental negligence. Moreover, since neither homeowner's or renter's insurance is compulsory, the dissent contended that the lack of insurance would deter a child from suing an uninsured parent. Even if a child of an uninsured parent did sue a third party and the parent was held liable for contribution, "family strife" would result.

An appropriate standard of care for parent-child relations must balance the parent's interests of control and discipline against the child's right to have a remedy for injury negligently inflicted by the parent. The reasonable parent standard achieves this balance by allowing parents to exercise discipline and control over the child, but only to the extent that it is reasonable. The parent is held to a standard of reasonableness regardless of the nature of his activity, thereby eliminating the arbitrary division between immunity and liability that existed under the Silesky exceptions. Unlike the Silesky exceptions, the reasonable parent standard does not give the parent a "right" to neglect any of his duties. More importantly, the child's right to recover for a negligently inflicted injury is protected without sacrificing parental discretion in child rearing.

The standard of reasonable parental conduct allows parents to be occasionally forgetful, careless, or strict without crossing the bounds of "reasonable" behavior. The reasonable parent standard allows a case-by-case determination of meritorious claims rather than a categorical ex-

39. Id. at 603.
40. Id.
41. Id.
42. See Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (recognized need for parental discretion in exercising discipline over child but only within reasonable limits); Sorensen v. Sorensen, 360 Mass. 350, 339 N.E.2d 907 (1975) (limited abrogation of parental immunity to automobile accidents because such actions did not undermine parental authority and discipline); Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1952) (recovery allowed for tort committed by parent while dealing with child in non-parent transaction).
44. See Comment, California's Answer, supra note 43, at 186; Comment, supra note 5, at 809; Comment, Parental Immunity, supra note 43, at 801; Comment, Parent-Child Tort Immunity: A Rule in Need of Change, 27 U. MIAMI L. REV. 191, 206 (1972) [hereinafter cited as Comment, Parent-Child Tort Immunity].
45. See Comment, Parent-Child Immunity in Oklahoma: Some Considerations for Abandoning the Total Immunity Shield, 12 TULSA L.J. 545, 553 (1977) [hereinafter cited as Comment, Parent-Child Immunity in Oklahoma]; Comment, supra note 5, at 809.
46. See Note, supra note 22 at 332; Comment, supra note 5, at 809. But see Article, supra note 28, at 215 (reasonable parent standard may expose parent to liability when he should be immune).
47. See Gibson v. Gibson, 3 Cal. 3d 914, 921, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 292 (1971); Note, supra note 22, at 331; Comment, supra note 5, at 809-10.
clusion of some classes of tort actions regardless of the parent's negligent conduct. The Anderson dissenters' fears of the undue influence of juror bias is not compelling. There is no way to remove a juror's values and attitudes from the fact-finding process. The law recognizes this problem and provides safeguards. The jury is a random cross-section of the community, assuring an adequate representation of diverse community values. Persons with strong prejudices can be removed from the jury panel during voir dire.

The prevalence of homeowner's and renter's liability insurance is a factor in favor of the adoption of the reasonable parent standard. The negligent parent often controls the decision to bring suit against a non-parent defendant. Thus, the uninsured or underinsured parent may be inclined to avoid suit against a non-parent defendant out of fear of third-party liability. But lack of insurance does not necessarily chill the incentive to sue. A parent may be partially liable as a third-party defendant and still wish to hold the non-parent defendant liable. Even if the parent is ultimately held liable for contribution, no more family strife or economic deprivation would occur than if the non-parent defendant were to sue an uninsured parent. In such situations the children may suffer economic deprivation, but the parent would not be granted immunity. Moreover, since insurance is readily available, decisions that im-

48. See Comment, supra note 5, at 809.
49. See Zeisel, The American Jury, Annual Chief Justice Earl Warren Conference on Advocacy in the U.S. (June 24-25, 1977). Zeisel also points out that in criminal and civil cases the disagreement rate between the judge and the jury is about 20%, which is within reasonable limits. This would indicate that the jury understands the case before it, and injects a sense of justice from the community.
50. Id. at 88.
51. Id.
52. See Gibson v. Gibson, 3 Cal. 3d 914, 922, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 293 (1971). See supra note 26 and cases cited therein. But see State Farm Homeowner's Policy, section II Exclusions 1.(g) at 10 (1977) (on file at William Mitchell Law Review office). The insurance policy exclusion states that personal liability and medical payments do not apply to the insured, or to any other person under the age of 21 who is in the care of the insured. Id. The validity of the exclusion has not been litigated. However, since the exclusion is in direct conflict with the underlying rationale for the abrogation of parent-child tort immunity, the prevalence of homeowner's insurance and the desire to compensate the child for an injury; the court is not likely to uphold the conclusion.
54. See 295 N.W.2d at 603 (Rogosheske, J., dissenting); Note, supra note 28, at 600-02.

Even if the parent is liable for contribution, there still may be a net gain in family finances because of the percentage of recovery from the third-party defendant.
56. See Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1952). The Borst court stated:

It may also be observed that, in a particular case, there may be no other children, or the family resources may be such that recovery of judgment will in
pose liability may induce uninsured persons to purchase homeowner's or renter's insurance. 57

The Minnesota Supreme Court is the first court to follow California in adopting the reasonable parent standard. The reluctance of other courts to adopt the reasonable parent standard is partly due to an inability to predict the consequences of the standard. Courts that have considered the standard have expressed fear over the potential loss of discretion in child rearing and the impracticality of imposing diverse religious, ethnic, and cultural values on matters of child rearing. 58 Furthermore, the Gibson court did not specify the quantum of negligence which would be required to find a parent liable. 59

The Anderson court adopted the guidelines for application of the reasonable parent standard established by Justice Fuchsberg in his concurring opinion in Nolechek v. Gesuale. 60 The test of a parent's conduct is based on all the relevant facts and circumstances, taking into account the parent-child relationship; the practical responsibilities, expectations and limitations that flow from the relationship; and the judgmental nature of the decisions a parent must make. The age, mental and physical health of the child, the intelligence, aptitudes and needs of the child, the presence of other children in the family and various other social, physical, and economic factors also should be considered. 61 In a case involving supervision of a child, the parent would be liable only if the accident could have been prevented by closer supervision and if it would have

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57. See W. PROSSER, HANDBOOK OF THE LAW OF TORTS, §§ 122, at 868 (4th ed. 1971). Prosser, discussing the prevalence of liability insurance as a factor to be considered in abrogation of the parent-child immunity, stated that "[m]ost of the courts which have mentioned that matter at all, instead of deciding the question as one of policy, have gone off the narrow technical ground that liability insurance does not create liability." Id.

58. See Comment, supra note 22, see, e.g., Schneider v. Coe, 405 A.2d 682, 684 (Del. 1979) (adoption of reasonable parent standard advocated but court fears standard would circumscribe wide range of discretion required in child-rearing); Pedigo v. Rowley, 101 Idaho 201, 205, 610 P.2d 560, 564 (1980) (diversity in religious, ethnic and cultural backgrounds of Idaho population would make reasonable parent standard inapplicable); Black v. Solmitz, 409 A.2d 634, 639-40 (Me. 1979) (limited abrogation of parental immunity to automobile negligence cases because concepts of parental immunity should be delineated on a case-by-case basis); Merrick v. Sutterlin, 93 Wash. 2d 411, 416, 610 P.2d 891, 893 (Wash. 1980) (parental authority and discipline should not lead to liability in certain situations; development of any immunity should be done on case-by-case basis).

59. See Article, supra note 28 at 203; Note, supra note 28, at 593.


been reasonable for the parent to have supervised the child more closely. The reasonable parent standard does not require that a parent be subjected to liability for every mistake. Only parental conduct that transgresses the bounds of "reasonableness" gives rise to tort liability.

The reasonable parent standard adopted by the Minnesota Supreme Court eliminates the inequity that non-parent defendants suffered under the Silesky exceptions. If two or more persons are jointly liable for an injury inflicted on another, contribution for damages should be in direct proportion to the percentage of fault attributable to each regardless of intrafamilial relationships. The reasonable parent standard ade-

62. See Comment, supra note 5, at 812.
63. Id. at 810-11.
64. The "reasonable parent" standard has been preferred by many commentators as the best approach to abrogation of parent-child tort immunity. See Ingram & Barder, The Decline of the Doctrine of Parent-Child Tort Immunity 68 ILL. B.J. 596, 601 (1980) (found reasonable parent standard to be most fair and workable); Note, supra note 28, at 603 (reasonable parent standard may be best approach to abrogation of parental immunity); Comment, California's Answer, supra note 43, at 187 (reasonable parent approach advocated for Idaho); Note, supra note 22, at 331-32 (reasonable parent approach advocated for Massachusetts); Comment, Parent-Child Immunity in Oklahoma, supra note 45, at 555 (reasonable parent advocated for Oklahoma); Comment, supra note 5, at 816-17 (advocating reasonable parent standard as best way to abrogate parent-child tort immunity); Comment, Parental Immunity, supra note 43, at 802 (reasonable prudent parent test advocated for Florida); Comment, Parent-Child Tort Immunity, supra note 44, at 206-07 (reasonable parent standard advocated for Florida); Comment, supra note 22, at 618 (reasonable parent standard preferable to Goller exceptions).
65. See MINN. STAT. §§ 604.01-.02 (1980). In Minnesota contributory fault will not bar recovery in an action by any person, if the contributory fault is not greater than the fault of the person against whom recovery is sought. Id. § 604.01. Minn. Stat. § 604.02(1) (1980) reads as follows: "When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award." In an action brought by a child against a non-parent defendant for negligence, where the non-parent defendant impleads the parent, the court or jury must determine the percentage of fault attributable to each. If the parent is found to be 40% at fault and the non-parent is found to be 60% at fault, each would have to contribute their proportion of the award. Thus, if the child is awarded $100,000 for damages, the parent would be liable for $40,000 and the non-parent defendant would be liable for $60,000.

In addition, a non-parent third-party may implead the parent for negligent conduct resulting in an injury to a child, and if the parent is found negligent, the parent would be liable for his proportion of contribution to the award. Id. § 604.02. Under Silesky even if a parent fell within one of the exceptions, thereby becoming immune, his negligence must still be considered to determine the percentage of fault of the non-immune defendant. Cf. Conner v. West Shore Equip. of Milwaukee, Inc., 68 Wis. 2d 42, 45, 227 N.W.2d 660, 662 (1975) (immaterial that corporation is not party or is immune from further liability since apportionment of negligence must include all whose negligence may have contributed to cause of action); Payne v. Bilco Co., 54 Wis. 2d 424, 431-32, 195 N.W.2d 641, 646 (1972) (required apportionment of negligence for all tort-feasors); Pieringer v. Hoger, 21 Wis. 2d 182, 191-92, 124 N.W.2d 106, 112 (1963) (percentage of causal negligence of nonsettling tort-feasor must be determined by proper allocation of all causal negligence of all joint tort-feasors and of plaintiff if contributorily negligent). Since the parent would be im-