Torts - Recovery for Emotionally Produced Physical Distress

Raymond M. Allen
of Torts indicates that a landowner's liability to trespassing children is not measured entirely by the doctrine of ordinary negligence, since the judge retains control over issues which normally would be allocated to the jury in an ordinary negligence case. Thus, in cases of injury to infant trespassers, the judge is free to find no cause of action when it is found that (1) likelihood that children will trespass is slight; or (2) there is no unreasonable risk of death or serious bodily harm; or (3) the child may have been of sufficient age to appreciate the danger. In determining the risks against which infant trespassers are protected, the language of negligence appears to offer a more flexible medium than does attractive nuisance. For these reasons it appears that Louisiana courts might well consider replacing attractive nuisance with a modified form of negligence.

Bert K. Robinson

TORTS — RECOVERY FOR EMOTIONALLY PRODUCED PHYSICAL DISTRESS

Plaintiff brought suit for personal physical injuries arising out of her fright caused by a traffic accident. The accident occurred when defendant negligently drove her small foreign car from her driveway and struck plaintiff's car. Plaintiff immediately feared that she had struck and killed a child, and upon learning the truth was relieved and stated to defendant that she was unharmed. Plaintiff went home and later in the day became nervous and upset. This nervousness grew steadily worse until she developed physical damage in the form of a conversion reaction. Approximately a month prior to the accident a small child had driven her bicycle into the side of a car being driven by plaintiff's brother-in-law, and was killed. Expert testimony in the present case was to the effect that this incident in plaintiff's family made her more susceptible to the fright caused by her accident with defendant. In the lower court, plaintiff was allowed recovery for her injuries. On appeal to the

27. Restatement, Torts § 339 (1934).
1. Plaintiff also sued for damages for her automobile and was awarded $200 by the trial court. This part of the trial court's decision was affirmed by the North Carolina Supreme Court.
2. Gould, Medical Dictionary 242 (Blakiston ed. 1949) : "Conversion — In psychiatry, a mental defense mechanism whereby unconscious emotional conflict is transformed into physical disability."

Generally courts deny recovery for negligently caused mental disturbance. However, when negligence causes physical injury which is accompanied by fright, virtually all courts will allow recovery for both the physical injury and the fright. When negligence causes only a mental disturbance such as fright or fear, and the mental disturbance results in physical damage, often recovery will be allowed for the resulting physical damage. However, some courts will not allow recovery for this damage, unless there has been impact, seemingly as a matter of proof of genuineness of the claim. The impact requirement appears to be easily satisfied, however, as exemplified by the case where plaintiff heard a crash and suffered fright which caused her to faint, and the court allowed the falling of her body to the floor to satisfy the impact requirement. As an additional requirement, most courts state that a plaintiff must base his claim on fear or fright for his own safety before recovery will be allowed for resulting physical damages. In *Waube v. Warring*...
ton the court found that where a mother feared for the safety of her child when she witnessed defendant's act of negligently killing the child, the defendant owed no duty to the mother for her physical damage caused by the fright. A third usual requirement for recovery is that the negligence which caused the fright must have been such that a normal person would suffer fright. However, once the defendant's conduct is shown to have created a situation which would induce fear in a normal person, the courts hold the defendant liable for damages caused thereby, even though the plaintiff is highly susceptible to fright.

It is difficult to draw a general conclusion from the available cases as to the Louisiana position on negligently caused fright. Apparently recovery will be allowed for physical damages resulting from fright in situations similar to those where recovery has been allowed in other jurisdictions. Dictum indications to the effect that recovery for nervous damage alone

10. 216 Wis. 603, 258 N.W. 497 (1935).
13. In the case of Stewart v. Arkansas Southern Ry., 112 La. 764, 36 So. 676 (1904), plaintiff suffered a miscarriage which resulted from fright caused by a minor train accident. The Supreme Court said that it would be convenient to adopt the rule that no recovery of any kind may be had for fright, caused by negligence of another, even though its consequences are most serious—such as blindness, insanity, or miscarriage, but that the text of the Civil Code looks to liability for all damages. The court allowed recovery for the miscarriage resulting from the fright.

In Pecoraro v. Kopanica, 173 So. 203 (La. App. 1937), the court denied recovery because of lack of proof that plaintiff suffered a fright when she heard a brick wall crash into the side of the building she was in. However, the court stated that damages could be had for nervous shock resulting from negligently caused fright even though there was no physical injury if it be proven that the nervous shock was suffered.

In Laird v. Natchitoches Oil Mill, 10 La. App. 191, 120 So. 692 (1929), plaintiff was negligently knocked off his bicycle by a truck being driven by a servant of defendant. Plaintiff was not physically injured, but suffered a fright and resulting nervousness. The court allowed damages for the temporary nervousness on the basis of the Stewart case.

In Klein v. Medical Building Realty Co., 147 So. 122 (La. App. 1933), plaintiff suffered fright when a large piece of plaster fell from the ceiling of defendant's building and either hit him or fell near him. The court allowed recovery for traumatic hysteria resulting from the negligently caused fright on a showing by a preponderance of evidence that plaintiff suffered from traumatic hysteria. There was no clear evidence of impact so it would seem that this case might indicate that impact is not required in Louisiana.

In Favalora v. New Orleans Ry. & Light Co., 143 La. 572, 78 So. 944 (1918), plaintiff suffered a nervous shock which resulted in physical discomforts and nervousness when a street car in which she was riding negligently collided with another street car. The court considered only the evidence of nervous shock and allowed recovery upon sufficient proof.
NOTES

will be allowed are probably explainable by the difficulties of distinguishing between physical and emotional harm. Probably a correct conclusion is that the Louisiana courts are substantially in accord with the general law on the subject of physical injury resulting from negligently caused fright.

In the instant case, the court relied upon many points in support of its denial of recovery. Probably the greatest reliance was placed on the remote relationship between what plaintiff believed and what actually occurred. In other words, the court seems to have felt plaintiff was not reasonable in fearing that a child had been struck simply because she heard a grinding noise. Apparently the courts have not generally inquired into the reasonableness of a plaintiff's fear, even though in the majority of fright cases the fear is of something which does not actually happen. It would seem that traditional tort analysis would not involve this type of inquiry. Tort law is settled that when a person negligently injures another who has a latent physical defect and the injury is more severe than it normally would be because of the latent defect, the defendant


15. Williamson v. Bennet, 251 N.C. 498, 507-08, 112 S.E.2d 48, 55 (1960): "It was not the collision that caused her anxiety, it was something that did not exist at all, a phantom child on a non-existent bicycle. . . . [H]er failure to look is a contributing cause of her fright, a cause without which the anxiety would not have arisen. . . . [T]here can be no recovery for fright and anxiety, and resultant neurosis, which arises for the safety and well-being of another. . . . The defendant was under no duty to anticipate or to take precautions against a mere possibility that plaintiff or other persons might imagine a state of facts that did not exist."

16. The court seemed to feel that defendant should not be liable for what might have or could have happened, but only for what actually did happen. It would seem that the court could have found that plaintiff was reasonable in assuming that she had struck a child. She was driving in the vicinity of a school and this could have been one of the thoughts that flashed through her mind in the split second that she realized that an accident had occurred. Perhaps this could have contributed to her erroneous conclusion, as well as did the fresh impression that was present because of her brother-in-law's experience. At any rate, she did not have time for detached reflection as to what had happened, for she heard the grinding sound and suffered the fright more or less simultaneously.

17. E.g., in the recent case of Strazza v. McKittrick, 146 Conn. 714, 156 A.2d 149 (1959), the Connecticut Supreme Court allowed recovery for physical injury resulting from fright caused by a belief that an earthquake was in progress when a negligently driven truck struck her house. The court did not go into the problem of whether plaintiff was reasonable in jumping to the conclusion that an earthquake was occurring.
is nonetheless held liable for the results of his negligence. It would seem that this general rule that the defendant takes his victim as he finds him would be equally applicable in the instant type of case.

The general rule, also relied upon to some extent by the court in the instant case, that a defendant is not liable for physical injury resulting from a plaintiff's fear for a third person, has had its usual application in situations where the plaintiff is not within the zone of danger. Seemingly, the reason for this rule is to enable the courts to deal with case where difficulties of proof militate against establishing the possibility of recovery. It would seem, however, that in a situation where the plaintiff is within the zone of danger and consequently could recover if he feared for himself, the mere fact that he feared for another should not preclude recovery. Since a person in a frightening situation does not have complete control over the direction his mind takes, there seems no good reason for penalizing him for not fearing for his own safety. No matter what mental gymnastics are undergone, the result reached is still the same; physical injury resulted from negligently caused fright.

Raymond M. Allen

Torts — Trespass to Land — Liability for Consequential Injuries

Plaintiff brought an action in trespass quare clausum fregit for damages to real property and personal injuries occasioned by the trespass. Plaintiff was a tenant in possession of certain premises. Defendant drove a truck onto the premises and damaged the steps of plaintiff's home. Nine days later plaintiff was injured by falling while attempting to use the broken steps. In his petition, plaintiff made no allegation that defendant was negligent when he damaged the steps. In the trial court, plaintiff made no allegation that defendant was negligent when he damaged the steps. The trial court granted defendant's motion to dismiss on the ground that this was a consequential injury for which recovery could not be had. On appeal
