

LEXSEE 485 A.2D 940

Jean Gearity v. Kathleen A. Salvo et al.**File No. 213418****Superior Court of Connecticut, Judicial District of Fairfield, at Bridgeport****40 Conn. Supp. 185; 485 A.2d 940; 1984 Conn. Super. LEXIS 183****November 1, 1984, Memorandum Filed**

PRIOR HISTORY: [***1] Memorandum on a motion by the plaintiff to strike a special defense of the defendant Richard Plofkin.

DISPOSITION: *Motion denied.*

CASE SUMMARY:

PROCEDURAL POSTURE: In plaintiff claimant's action to recover for wilful and malicious damage to the claimant's property that was allegedly caused by a minor child, the claimant brought a motion to strike a special defense of defendant father that alleged that the child was in the exclusive care, custody, and control of her mother.

OVERVIEW: The claimant brought an action against, inter alia, the father of a minor child who caused wilful and malicious damage to the claimant's property. The father asserted in a special defense that the child was in the exclusive care, custody, and control of her mother, another defendant. The claimant brought a motion to strike the father's special defense. The court denied the motion, holding that "control of the minor" was a determining factor in imposition of liability under *Conn. Gen. Stat. § 52-572* and therefore that the special defense was legally sufficient.

OUTCOME: The court denied the claimant's motion to strike the special defense of the father in the claimant's action to recover for wilful and malicious damage to the claimant's property caused by the father's minor daughter.

CORE TERMS: minor child, special defense, unemancipated minor, custody and control, statutory liability, daughter's, custody

LexisNexis(R) Headnotes

Civil Procedure > Pleading & Practice > Defenses, Demurrers, & Objections > Motions to Strike > General Overview

[HN1] A motion to strike challenges the legal sufficiency of a cause of action or defense, *Conn. Gen. Prac. Book, R. Super. Ct. § 152*, and admits all facts well pleaded.

Family Law > Guardians > General Overview
Family Law > Parental Duties & Rights > General Overview

Governments > Legislation > Interpretation

[HN2] *Conn. Gen. Stat. § 52-572* states that the parent or parents or guardian of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding \$ 3,000, if the minor or minors would have been liable for the damage or injury if they had been adults. This language is clear and unambiguous. While the plain meaning of § 52-572 dictates, however, that the mere relation of parent and child is enough to impose statutory liability upon a parent, the courts have not construed the statute so strictly. Rather, some courts have drawn a distinction between technical custody and actual control of the minor in order to impose liability upon the parent. The courts have noted that *General Statutes § 52-572* was intended to combat the rise of juvenile delinquency by obligating parents to control their minor children so as to prevent them from intentionally harming others. In addition, courts have recognized that a parent is under a duty to exercise reasonable care to control his minor child if the parent knows that he has the ability to do so and the opportunity. On this basis, courts have viewed control as a determining factor in imposing parental liability under § 52-572.

40 Conn. Supp. 185, *; 485 A.2d 940, **;
1984 Conn. Super. LEXIS 183, ***

COUNSEL: *Mihaly & Mihaly*, for the plaintiff.

Ralph L. Palmesi, for the named defendant.

Myron R. Ballen, for the defendant Richard Plofkin.

Myrna Gans, for the defendants Linda Ann Plofkin and Barbara Poppa.

JUDGES: Zoarski, J.

OPINION BY: ZOARSKI

OPINION

[*186] [**941] In this action, the plaintiff seeks to recover against the defendants Kathleen A. Salvo and Linda Ann Plofkin for wilful and malicious damage to her property. The second count of the complaint alleges that the defendant Plofkin is an unemancipated minor living with her mother and that, pursuant to *General Statutes* § 52-572, the parents, Richard Plofkin and Barbara Poppa, are responsible for their daughter's actions. In his answer, the defendant Richard Plofkin denies responsibility for his daughter's conduct. In addition, he asserts in a special defense that the defendant Barbara Poppa had exclusive care, custody and control of their minor child at the time of the acts complained of and for some time prior thereto. The plaintiff moves to strike the special defense [***2] as legally insufficient in that "exclusive care, custody and control" are not prerequisite to the imposition of statutory liability upon a parent under *General Statutes* § 52-572.

[HN1] A motion to strike challenges the legal sufficiency of a cause of action or defense; Practice Book § 152; and admits all facts well pleaded. *Verdon v. Transamerica Ins. Co.*, 187 Conn. 363, 446 A.2d 3 (1982).

[HN2] *General Statutes* § 52-572 states: "The parent or parents or guardian of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person . . . shall be jointly and severally liable with the minor or

minors for the damage or injury to an amount not exceeding three thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults." This language is clear and unambiguous. While the plain meaning of § 52-572 dictates, however, that the mere relation of parent and child is enough to impose statutory liability upon a parent, the courts have not construed the statute so strictly. Rather, some courts have drawn a distinction between technical custody and actual control of the [*187] [***3] minor in order to impose liability upon the parent. See *Repko v. Seriani*, 3 Conn. Cir. Ct. 374, 376-77, 214 A.2d 843 (1965); *Gillespie v. Gallant*, 24 Conn. Sup. 357, 190 A.2d 607 (1963). The courts have noted that *General Statutes* § 52-572 was intended to combat the rise [**942] of juvenile delinquency by obligating parents to control their minor children so as to prevent them from intentionally harming others. *Repko v. Seriani*, *supra*, 377; *Lutteman v. Martin*, 20 Conn. Sup. 371, 375, 135 A.2d 600 (1957). In addition, courts have recognized that a parent is under a duty to exercise reasonable care to control his minor child if the parent knows that he has the ability to do so and the opportunity. *Repko v. Seriani*, *supra*, 376; *Gillespie v. Gallant*, *supra*, 359; see 2 *Restatement (Second), Torts* § 316. On this basis, courts have viewed control as a determining factor in imposing parental liability under § 52-572. Thus, a father was held liable for the intentional harm caused by his son even though the child was technically in the custody of the state. *Repko v. Seriani*, *supra*, 378. The court stated that at the time [***4] of the child's actions he was under the father's control and the duties of a parent, therefore, belonged to the father. *Repko v. Seriani*, *supra*.

This case differs from *Repko v. Seriani* in that the defendant alleges that the minor child resided with her mother prior to and at the time of the acts allegedly committed by the child.

This court concludes that "control of the minor" is a determining factor in the imposition of liability under § 52-572, and therefore finds that the special defense is legally sufficient.

For that reason the motion to strike is denied.