

ACTION FOR EMOTIONAL DISTRESS

Fact Pattern:

A mother and her daughter witnessed the death of her other daughter, an infant, caused by a negligent driver. The daughter saw it from a curb near the accident and the mother saw it from a distance. Both mother and daughter brought an action for negligent infliction of emotional distress.

Question:

May a close family member viewing the negligent injury or death of another family member recover for negligent infliction of emotional distress even if outside the zone of danger?

Rule

Whether or not a plaintiff who witnesses the negligent injury of a close family member is within the zone of danger should be irrelevant to the allowance of recovery for the shock and trauma suffered by viewing the accident.

Discussion

The underlying concept for the tort of negligent infliction of emotional distress is that one has a legal duty to use reasonable care to avoid causing emotional distress to another individual. A claim for negligence requires that there be a duty to act or not act on the part of the wrongdoer and a breach of this duty which causes harm to another person. If the driver is held liable for the death of the child, then he will be held liable for the mother's emotional distress if she was in the 'zone of danger' at the time of the occurrence. Emotional distress encompasses mental



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anguish and suffering, including anxiety, grief, fear, shock, and humiliation, among a variety of other negative emotions. In the state of California, it is not necessary that physical symptoms arise as a consequence of emotional distress (such as significant weight loss as a result of anxiety). Emotional distress itself is enough to give rise to a negligent infliction of emotional distress cause of action. In this case, the harm complained of by both mother and daughter was foreseeable and the driver of the car owed them a duty of care. A three factor analysis is used to determine whether an emotional injury was foreseeable, meaning the defendant owed a duty of due care:

1. Whether plaintiff was in close proximity the accident scene;
2. Whether a "direct emotional impact" from contemporaneous observance of the accident caused the plaintiff's shock; and
3. Whether there was a close relationship between the plaintiff and victim.

Here, the mother saw the accident; the injuries (severe emotional distress) was caused by the sight of the accident; and she was the parent of the victim. All of these factors are satisfied in the above fact pattern and it is clearly a direct and foreseeable consequence of the accident and the mother of the infant will be able to make a claim for damages related to her emotional distress that resulted from witnessing the death of her child.

While the proximity of an injured person is determinative to recover for emotional distress, the bystander need not be standing within the zone of danger of the accident – in other words, the mother need not herself have been at risk of physical injury – in order to successfully sue under the bystander theory of negligent infliction of emotional distress.

Life Care Planning Issues:

As with any claim for emotional distress of an injured person, or spouse in a Loss of Consortium claim, or from a plaintiff with claims related to negligent infliction of emotional distress or intentional infliction of emotional distress there will need to have evidence to support the diagnosis, causation for the diagnosis, and treatment plan required for the diagnosis to the plaintiff's life expectancy.