University of Miami Law Review

Volume 4 | Number 2 Article 13

2-1-1950

Domestic Relations -- Right of Infant to Bring an Action for the Enticing Away of a Parent

of causation.[8] Second, the jury has been asked to determine both the limits of responsibility and causation.[9] Third, the court has determined both the limits of responsibility and causation.[10]

The court in the principal case has followed the third method above in determining proximate cause by deciding both the limits of responsibility and causation. The only question presented to the jury was the question of whether defendant had been engaged in a robbery at the time of the death. But proof of robbery alone doesn't establish causal connection between the robbery and the death.[11] Nor should the fact of causal connection be assumed by the court.[12] This court cites *Commonwealth v. Moyer*[13] as authority for determining proximate cause as a matter of law, however, although that case did establish that the limits of responsibility under the felony murder statute in Pennsylvania do extend to cover the fact situation of the principal case, it cannot be said to have eliminated the necessity of a fact determination of causation by the jury.[14]

It is submitted that the court in the principal case properly performed its function as the determiner of policy by stating the limits of responsibility under the felony murder statute, but that the court invaded the province of the jury in deciding the fact question of causation. Though the result cannot be said to have been unjust in this case, deviations from the principle that the jury is the determiner of fact should be avoided since such deviations are likely to be accepted as authority in future cases involving the question of proximate cause.

DOMESTIC RELATIONS—RIGHT OF INFANT TO BRING AN ACTION FOR THE ENTICING AWAY OF A PARENT

Infants brought suit by their father and next friend against the defendant for wrongfully enticing and inducing their mother to leave them and their family home. A motion was filed by the defendant to dismiss the suit on the grounds that the alleged cause was not recognized in the state of Michigan since "heart balm" actions had been abolished.[1] *Held,* that a child has a legally

8. Butler v. State, 125 Ill. 641, 18 N.E. 338 (1888); Taylor v. State, 41 Tex. Cr. R. 564, 55 S.W. 961 (1900).
9. Keaton v. State, 41 Tex. Cr. R. 621, 57 S.W. 1125 (1900).
10. Letner v. Tenn., 156 Tenn. 68, 299 S.W. 1049 (1927).
11. Commonwealth v. Kelly, 333 P. 280, 4 A.2d 805 (1939); State v. Golden, 67 Idaho 497, 186 P.2d 485 (1947).
12. State v. Lanto, 98 N.J.L. 401, 121 A. 139 (1923); People v. Marendi, 213 N.Y. 600, 107 N.E. 1058 (1915).
13. 357 Pa. 181, 53 A.2d 736 (1947).
14. Though the court in *Commonwealth v. Moyer* did, in effect, determine causation, it was due to an inadequate presentation of the question to the jury rather than due to a decision that such question was for the court to determine.

1. MICH. COMP. LAWS, § 551.302 (1948).

enforceable right against one who causes his mother to desert him; the abolition of alienation of affections suits refers only to actions brought by a spouse. Motion dismissed. *Russick v. Hicks,* 85 F. Supp. 281 (S.D. Mich. 1949).

At common law a child could not bring an action for the interference of a third party with the parent-child relationship. Blackstone stated one reason for this was that: "The inferior [the child] hath no kind of property in the company, care, or assistance of the superior, [the parent] as the superior is held to have in those of the inferior; and therefore the inferior can suffer no loss or injury. . . ." [2] As a result of such thinking, the child is afforded almost no protection from the acts of outsiders disrupting the family unity in many jurisdictions today. The recognition of this cause of action, it was feared, would inundate the courts with litigation and would not prove a discouraging factor in preventing others from committing similiar acts.[3] Another ground for denying relief to the off-spring was the fact that the traditional alienation of affections suit was brought by an abandoned spouse since the gist of that action was the loss of marital or conjugal relations not present when a child of the dissipated marriage brings suit.[4] These factors plus a hesitancy by courts to be guilty of judicial legislation[5] has resulted in many rulings that the child has no remedy at law for the enticing away of a parent.[6]

However, the concept of the family has slowly changed and to keep pace with this shift, some courts have realized the necessity for allowing an infant a legal remedy for the wrongful inducing of a parent from the home.[7] Accordingly, it is stated that all members of the family have correlative rights and duties in a group which is a cooperative enterprise.[8] The child has an interest in the society and affection of its parent,[9] particularly its mother, for she has the duty of providing intellectual, moral, and physical training in a manner as can only proceed from her.[10] The enticing of a mother from the home results in a grievous and tragic wrong to the child and to society; for in the early years of life a parent is influential in the formation of the character, disposition, and abilities of the communities' future citizens.[11] The instant case, believing this the better considered view because of such considerations, permits the child to protect his family unity by recognizing this cause of action.

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2. BL. COMM. *143.
3. Morrow v. Yannantuono, 152 Misc. 134, 273 N.Y. Supp. 912 (1934).
4. Taylor v. Taylor, 134 Conn. 156, 56 A.2d 768 (1947); *accord,* Coulter v. Coulter, 73 Colo. 144, 214 Pac. 400 (1923) (suit by an adult child).
5. Garza v. Garza, 209 S.W.2d 1012 (Tex. 1948).
6. McMillan v. Taylor, 160 F.2d 221 (D.C. Cir. 1946); Rudley v. Tobias, 84 Cal. App.2d 454, 190 P.2d 984 (1948); *accord,* Cole v. Cole, 277 Mass. 500, 177 N.E. 810 (1931) (suit by adult son against his sister).
7. Daily v. Parker, 152 F.2d 174 (7th Cir. 1945); Johnson v. Luhman, 330 Ill. App. 598, 71 N.E.2d 810 (1947); Miller v. Monsen, 37 N.W.2d 543 (Minn. 1949).
8. Johnson v. Luhman, *supra.*
9. Pound, *Interests in Domestic Relations,* 14 MICH. L. REV. 185 (1916).
10. *Cf.* Tilley v. Hudson R.R., 24 N.Y. 476, 23 How. Pr. 363 (1862).
11. Miller v. Monsen, *supra.*

It is not entirely new to place a monetary value on the attention, love, and devotion received by the child from its parents. When a railroad employee dies as a result of injuries sustained in the course of employment, the damages awarded to his children are based on the loss of the parent's company, care, and guidance and not merely the detriment suffered due to the availability of only a less adequate means of support.[12] The Employer's Liability Act [13] provides that compensation be granted to the child in such cases and it has been decided that the infant's loss is of an altogether different nature than that suffered by the remaining spouse.[14]

Certainly, the denial of this right to children places the courts in a rather incongruous position. Pecuniary compensation is awarded for the intangible detriment resulting from the loss of a parent who is killed, but recovery is denied when damage is due to other means.

EVIDENCE—ADMISSIBILITY OF SCIENTIFIC EVIDENCE—HARGER DRUNKOMETER

Defendant was convicted of negligent homicide as a result of a death attributable to his negligence in an automobile accident. The results of a drunkometer test were admitted into evidence to support the state's contention that he was under the influence of alcohol at the time of the accident. This evidence obtained by the drunkometer was admitted over defendant's objection. *Held,* on appeal, that data obtained through the "Harger Drunkometer" was improperly admitted in evidence in support of the conclusion that defendant had been under the influence of alcohol at the time of the accident. *People v. Morse,* 38 N.W.2d 322 (Mich. 1949).

Where evidence obtained by a scientific device is sought to be admitted, the courts will usually permit the introduction of such evidence only if the device by which said evidence is obtained is reliable.[1] Until such proof, the probative value attributable to evidence of this nature is subject to dispute.[2] The courts appear to be overwhelmingly committed to the viewpoint that chemical analysis of body fluids, together with expert opinion testimony as to

12. Norfolk v. Western R.R., 235 U.S. 625 (1915); Michigan Cent. R.R. v. Vreeland, 227 U.S. 59 (1912); Alabama Great Southern R.R. v. Cornett, 214 Ala. 23, 106 So. 242 (1925); Snipes v. Michigan Cent. R.R., 231 Mich. 404, 204 N.W. 84 (1925).

13. 35 STAT. 65 (1908), 45 U.S.C. 51 (1946).

14. Mich. Cent. R.R. v. Vreeland, *supra.*

1. State v. Thorp, 86 N.H. 501, 171 Atl. 633 (1934) (ultraviolet ray machine); McGrath v. Fash, 244 Mass. 327, 139 N.E. 303 (1923) (x-ray machine); 3 WIGMORE, EVIDENCE § 795 (3d ed. 1934).

2. State v. Damm, 64 S.D. 309, 266 N.W. 667 (1936) (blood grouping to show paternity). Photomicrographs of cut surfaces of knife, *Compare* State v. Fasick, 149 Wash. 92, 270 Pac. 123 (1928) (inadmissible), *with* State v. Clark, 156 Wash. 543, 287 Pac. 18 (1930) (admissible).