



If you have questions or would like further information regarding Parental Supervision and Duty to Control Others, please contact:

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## ILLINOIS LAW MANUAL

### CHAPTER VI OTHER CAUSES OF ACTION

#### I. PARENTAL SUPERVISION AND DUTY TO CONTROL OTHERS

##### 1. Parental Liability for Failure to Supervise

A parent is generally not liable for the torts of his or her child based solely upon the parental relationship. Lott v. Strang, et al., 312 Ill. App. 3d 521, 523-24, 727 N.E.2d 407, 409 (4th Dist. 2000) (citing Bishop v. Morich, 250 Ill. App. 3d 366, 370, 621 N.E.2d 43, 46 (1st Dist. 1993)). The exception to this rule is set forth in Restatement (Second) of Torts, Section 316 at 123-24 (1965), which provides:

A parent is under a duty to exercise reasonable care so as to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent:

- (a) knows or has reason to know that he has the ability to control his child, and
- (b) knows or should know of the necessity and opportunity for exercising such control.

Id. at 524, 727 N.E.2d at 409 (citing Restatement (Second) of Torts, Section 316 at 123-24 (1965)). Therefore, in order to establish liability based upon the above, a plaintiff must show:

- (1) the parent was aware of specific instances of prior conduct sufficient to put him or her on notice that the act complained of was likely to occur; and
- (2) that the parent had the opportunity to control the child.

Id.

Parental knowledge of general misbehavior or violence by a minor child is insufficient to show that parents could “reasonably foresee the *particular* type of violent acts committed by the minor.” Pesek v. Discepolo, et al., 130 Ill. App. 3d 785, 787, 475 N.E.2d 3, 4 (1st Dist. 1985) (emphasis added). “No parental liability exists without notice of a specific type of harmful conduct and an opportunity to interfere with it.” Barth v. Massa, 201 Ill. App. 3d 19, 558 N.E.2d 528 (5th Dist. 1990).

With regard to wilful or malicious acts, the Parental Responsibility Law, 740 ILCS 115/1, et seq., provides that the parent of an unemancipated minor, above the age of eleven (11) years, but not yet nineteen (19) years of age, who resides with the parent is liable for the actual damages caused by the minor’s wilful or malicious acts. Recovery under this Act is limited to a maximum of \$20,000 plus court costs and reasonable attorneys’ fees (except for plaintiffs which are governmental units). In an action under this Act for personal injury, only medical, dental, and hospital expenses may be considered.

## **2. Analysis**

Other than situations in which the Parental Responsibility Law applies, a plaintiff must prove the following two facts in order to place liability for a minor's acts upon the minor's parents:

- (1) that the parents were aware of specific instances of prior conduct that put the parents on notice that the act currently complained of was likely to occur; and
- (2) that the parents had the opportunity to control the child.

The court in Barth analyzed each of these elements.

In Barth, the defendant's son bought a stolen handgun and shot a police officer during a burglary. The injured officer argued that the parents were aware that their son had been involved in a prior BB gun shooting, and this put the parents on notice that their son was likely to commit the burglary and shooting. The court disagreed and held that the prior BB gun shooting did not put the parents on notice that their son was likely to buy a stolen gun, commit a burglary, and shoot a police officer while attempting to escape. The court also noted that the parents had no opportunity to control their child because they were not at the scene of the crime, nor did they know of his plans to commit the burglary. The court held that the absence of evidence that the parents knew or should have known of the necessity and opportunity to control their son was fatal to liability.

Similarly, in Lott v. Strang, 312 Ill. App. 3d 521 (2000), the court held that parental knowledge that the child had had an automobile accident a year prior did not constitute knowledge of prior conduct sufficient to put the parents on notice that an accident was likely to occur. The court further noted that the parents had no duty to discipline their child and regulate his conduct on a long-term ongoing basis. Parents are not liable for such broadly defined omissions. Lott, 312 Ill. App. 3d at 325.

Liability under the Parental Responsibility Law, however, is strict liability. That is, a parent or legal guardian of an unemancipated minor (twelve (12) through eighteen (18)) will be held liable for actual damages up to an amount of \$20,000, plus court costs and reasonable attorneys fees, for the wilful or malicious acts of the minor, regardless of whether the parent had knowledge of prior conduct and regardless of whether the parent had an opportunity to control the child at the time of the child's wrongful acts.