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Opinion No. 01-010

Civil Liability of a Parent for Minor Child's Conversion of Property

QUESTION

Can a parent or guardian be held civilly liable for the conversion of personal property by that parent's minor child?

OPINION

No. A parent or guardian may not be held civilly liable for a minor child's conversion of property except as provided in Tenn. Code Ann. § 37-10-101 for a minor's malicious or willful destruction of property.

ANALYSIS

You have questioned whether a parent or guardian may be held civilly liable under Tenn. Code Ann. § 37-10-103 for a minor child's conversion of another's property. Specifically, you raise the question of whether a parent or guardian can be liable if a minor child borrows property from a neighbor but fails or refuses to return such property. It is our opinion that a parent or guardian may not be held civilly liable under such facts.

At common law, parents could not be held liable for the torts committed by their children. *Nichols v. Atnip*, 844 S.W.2d 655, 658 (Tenn. App. 1992). As a child was considered to be a separate legal entity under common law, the child was actually responsible for his or her own torts. *Lavin v. Jordan*, 16 S.W.3d 362, 366 (Tenn. 2000). Since children are usually not financially able to satisfy a judgment, victims of juvenile torts typically went uncompensated under the common law rule. *Id*.

Thus, in 1957 the Tennessee General Assembly enacted a statute allowing for a very limited recovery against parents or guardians for intentional property damage caused by their children. 1957 Pub. Acts, Ch. 76. Subsequently, the Tennessee Supreme Court also recognized a common law action against

parents. *Bocock v. Rose*, 213 Tenn. 195, 373 S.W.2d 441 (1963). While the Court in *Bocock* recognized that parents could not be held liable for the torts of their children merely because of the parent/child relationship, parents could be held liable for their own negligence in failing to exercise reasonable restraint upon a minor with a known propensity to commit assault. 213 Tenn. at 202, 373 S.W.2d at 445.

The Tennessee Supreme Court recently again addressed the issue of parental liability based on the tortious acts of their children. *Lavin v. Jordan, supra*. Specifically, the Court held in *Lavin* that Tenn. Code Ann. § 37-10-103(a) did not create an independent cause of action. Rather, this section was found to merely set forth the circumstances under which parents may be held liable in an action commenced under Tenn. Code Ann. § 37-10-101. Consequently, the Court held that the only cause of action for parental liability was under Tenn. Code Ann. § 37-10-101 and therefore, the $10,000.00 limitation on damages provided in Tenn. Code Ann. § 37-10-102 applied to the plaintiffs' action for the wrongful death of their son. 16 S.W.3d at 367-68.

Moreover, the Court held in *Lavin* that the common law action for parental liability recognized in *Bocock* has been superceded by statute. 16 S.W.3d at 370. The Court noted that in amending the parental liability statutes in 1981 and 1985, the Legislature adopted the language in *Bocock*. Thus, since the Legislature sought to regulate by statute that which was already governed by common law, any conflict must be resolved in favor of the statute. 16 S.W.3d at 369. Accordingly, any action against a parent or guardian for intentional or malicious injury to persons or property by a minor child is governed by Tenn. Code Ann. § 37-10-101.

Therefore, at this time, there is no authority to hold a parent or guardian civilly liable for a minor child's conversion of the property of another unless such action is based on the willful or malicious destruction of such property and the parent knew or should have known of the child's tendency to commit wrongful acts and the parent had the opportunity to control the child but failed to exercise reasonable means to restrain the tortious conduct.

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