

Facts:

Henry and Alice are walking their 3-year-old child Dennis in their neighborhood. At a corner of a busy intersection section, they encounter George who has just come back from an exciting fishing trip. While George is busy telling Henry and Alice about his trip, Henry and Alice fail to notice that Dennis had wandered into the middle of the street.

A large semi-truck, owned by Hardluck Freight was traveling on the road at the legal speed limit. The driver spotted Dennis and very quickly applied the brakes. Fortunately for Dennis, the truck was able to stop just short of Dennis. Unfortunately, because the brakes were applied so quickly, the truck's trailer unit swerved out into the other lane, striking a car driven by Tommy and severely injuring him.

The driver of the large semi-truck was not negligent when he applied the brakes. However, an anti-swerve device was available. If the anti-swerve device was installed on the truck, it would have prevented the trailer from swinging into the other lane. The device could be installed easily and cheaply, but most commercial truck operators do not install the device.

Questions:

1. If Tommy sues Henry and Alice for his injuries, will he prevail?
2. If Tommy sues Hardluck Freight for his injuries, will he prevail?

Sample Answer:

1. Yes. As a general rule, parents are not vicariously liable for the tortious conduct of their child. However, parents may be liable for their own negligence in allowing their child to do something. The essence of negligence is that the Defendant has imposed an "unreasonable" risk of harm on the Plaintiff, and the Plaintiff has been injured as a result. A prima facie case of negligence requires: duty, breach of that duty, causation, and damages. The Plaintiff must prove these elements by a preponderance of the evidence.

There is a general duty to act as an ordinary, prudent, reasonable person. An ordinary, prudent, reasonable person would take precautions against creating an unreasonable risk of injury to other persons. This duty of care is owed to foreseeable Plaintiffs. By failing to watch Dennis, Henry and Alice created an unreasonable risk of injury to persons such as Tommy who were traveling on the road. Henry and Alice breached their duty to Tommy. But for this breach, the injury to Tommy would not have occurred; thus, this breach actually caused the injury. Although the injuries were directly inflicted by Hardluck Freight's driver, the actions of the driver constitute a foreseeable intervening force, i.e., it was foreseeable that a driver in a similar situation might strike another vehicle in an effort to avoid striking Dennis. Therefore, this is not the type of intervening force

that will break the causal connection between the original breach of duty by Henry and Alice and the injury suffered by Tommy. Consequently, Henry and Alice's breach of duty proximately, as well as actually caused Tommy's injuries. Henry and Alice are liable, on a negligence theory, to Tommy for his injuries.

2. Yes. Because the anti-swerve device could have been cheaply and easily installed, the exercise of prudent, ordinary, and reasonable care would require Hardluck to have the device installed on its trucks. This is especially true in light of the fact that such a serious risk could have been avoided with no difficulty and little expense, this risk created by Hardluck was unreasonable and a breach of its duty.