VERMONT SUPERIOR COURT

SUPERIOR COURT Windsor Unit	CIVIL DIVISION Docket No. 313-6-11 Wrcv

Jeffrey D. Hayes, Deborah Hayes McGraw, Admins.
Plaintiff

v.

Timothy S. Whitney, et al.
Defendant

DECISION ON MOTION FOR DECLARATORY JUDGMENT

Plaintiffs have filed a motion seeking a declaration of the extent of parental liability under the statute that makes parents liable for injuries caused by their children. 15 V.S.A. § 901(a). At issue is whether the statute makes parents liable for the torts of their unemancipated children in the amount of $5,000 *per parent* or whether the statute instead imposes joint and several liability.[1]

The relevant portion of the text of the statute is as follows:

> When an unemancipated minor under the age of 18 years willfully or maliciously causes damage to any property, public or private, or injury to a person, *either of his parents shall be liable to the owner of such property or to the person injured*, in an action on this statute, for the damage to the property, injury to person, or either, *in an amount not to exceed $5,000.00* provided such minor would be liable had such minor been an adult.

15 V.S.A. § 901(a) (emphasis added).

In construing a statute, the role of the court is to determine the intent of the Legislature, which is most often reflected in the plain, ordinary meaning of the terms used. *Pease v. Windsor Dev. Review Bd.*, 2011 VT 103, ¶ 17, 190 Vt. 639 (mem.). Here, the intent of the statute is to establish that parents will be liable for the acts of their unemancipated minors "in an amount not to exceed $5,000.00."

[1] The issue was discussed at a status conference held on February 28th. At that hearing, defendant Penny Simmers indicated that she would not be filing any response to the present motion. For that reason, the Court is not deciding the motion prior to the expiration of the response period.

The statute further explains that the plaintiff may seek to collect this amount from "either" parent—meaning that the plaintiff may seek to recover the total sum from "one or the other of the two." See *United States v. Rigas*, 605 F.3d 194, 208 (3d. Cir. 2010) (quoting *Merriam Webster* for the definition of "either"). This is a classic expression of the principle of joint and several liability, wherein a plaintiff may apportion the total sum of damages "either among two or more parties or to only one." Black's Law Dictionary (9th ed. 2009); accord *Plante v. Johnson*, 152 Vt. 270, 274 (1989).

Plaintiff's proposed interpretation is that the statute makes both parents independently liable for the amount of $5,000 each, such that a plaintiff may recover a total of $10,000 in cases where the unemancipated minor has two living parents. Such an interpretation does not make sense because it does not provide uniformity of treatment to all plaintiffs, but rather makes the total sum of recovery dependent upon what ought to be an immaterial fact: whether the tortfeasor has one living parent or two. A much simpler approach is to interpret the term "either" as referencing a scheme of joint and several liability. If the Legislature had intended for both parents to be liable for $5,000, it could have easily reached that result by using the term "both" instead of "either."

For these reasons, the Court concludes that § 901(a) makes parents jointly and severally liable for the acts of an unemancipated minor "in an amount not to exceed $5,000.00." The statutory amount may be collected in whole or in part from either parent, at the election of the plaintiff.

ORDER

The liability of Timothy Whitney's parents, if liable under the statute, is limited to a collective amount of $5000.

Dated at Woodstock this 25th day of March, 2013.

Harold E. Eaton, Jr.
Civil Division Judge