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TORTS: THE RIGHT OF A CHILD TO SUE THE ESTATE OF A DECEASED PARENT IN TORT.*

The Supreme Court of New Hampshire held in *Dean v. Smith*¹ that an unemancipated child may sue her deceased parent’s estate for injuries arising from the parent’s negligent operation of an automobile in which the parent was killed. The court thereby overruled a prior case² which had denied an unemancipated child the right to maintain suit against the deceased parent’s estate for injuries arising in tort.

The general rule in this country is that an unemancipated minor may not bring an action against the parent for ordinary negligence.³ Courts have denied a child the right to sue primarily on grounds of public policy, holding that to do otherwise would undermine parental discipline and control, and domestic tranquility, and would therefore weaken the basic structure of society—the family.⁴

The general rule was applied in a situation where the child was suing the deceased parent’s estate in *Lasecki v. Kabara*.⁵ In that case, six children sustained injuries in a collision between their father’s automobile and another vehicle caused by the father’s negligence. The court refused to allow the children to sue the deceased parent’s estate. Another fact situation similar to the *Lasecki* case was a suit on behalf of one child and the estate of another.⁶ One of the children was injured, and the other killed in an automobile accident caused by their father’s negligence. Citing the *Lasecki* case, the court refused to allow the suit. The courts supported their holdings with the following reasons: (1) a child who could not maintain a suit against his parent during the latter’s lifetime could not maintain an action against his estate after his death; (2) to allow such recovery would invite unlimited tort claims to be filed by minors after their parent’s death.⁷

The validity of the first reason should have been questioned by the courts, since most courts following the doctrine of parental immunity recognized the immunity the parent might have from suit by the minor.

* (Editor’s Note) This article on tort actions by unemancipated minors against estates of their deceased parents, the following article on tort actions between unemancipated minors of the same family, and the article in 2 TULSA LAW JOURNAL 72 (1965) on tort actions by unemancipated minors against their parents, cover the child’s right to sue within the family.

¹ 211 A.2d 410 (1965).
³ The rule originated in a case of false imprisonment of a child by her parent. Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891). Almost without exception the rule has been adopted by other jurisdictions. See, e.g., Ownby v. Kleyhammer, 194 Tenn. 109, 250 S.W.2d 37 (1952); Ball v. Ball, 59 Wyo. 204, 269 P.2d 302 (1954); Chaffin v. Chaffin, 397 P.2d 771 (Ore. 1965).
⁴ Ibid.
⁵ 235 Wis. 645, 294 N.W. 33 (1940).
⁶ Worrall v. Moran, supra note 2.
⁷ Lasecki v. Karaba, supra note 5; Worrall v. Moran, supra note 2.
child for personal tort arose from a disability to sue and not from lack of
violated duty. The New Hampshire court had previously pointed out
this distinction saying: 

"It has never been a common-law rule that
a child could not sue its parent .... The minor has the same right to re-
dress for wrongs as any other individual .... The limitations which have
been put upon that right have been deduced from prevalent ideas touch-
ing family life, and especially parental rights and duties."

The disability
was imposed for the protection of family control and harmony and existed
only where a suit or the prospect of a suit might disturb the family rela-
tions. The New Hampshire court said, 

"It is self-evident that the dis-
ruption of family relations and the weakening of parental rights and duties
are much less likely to occur, if at all, when the child's suit is against the
estate of a deceased parent."

Consequently, there was no reason to im-
pose a disability on the child which prevented suit against the deceased
parent's estate. The reason for the rule being absent, the rule did not
apply.

As for the second reason, it appears the court's fear was more
imagined than real. It is difficult to imagine a deluge of suits arising
from allowing a child's recovery against the deceased parent's estate than
from allowing any other tort claim.

It appears the Oklahoma court has not yet faced a fact situation
similar to the Dean case. However, the court has adopted the majority
rule in Tucker v. Tucker, where a child attempted to sue her living
parents for injuries sustained by the parent's negligent operation of an
automobile. The court's decision gave no indication of what it would
do in a fact situation similar to the Dean case.

It is significant that the New Hampshire court in allowing the minor
to sue her parent's estate expressly overruled Worrall v. Moran which
had denied an unemancipated child the right to bring suit against her
parent's estate for a personal tort. Courts have been reluctant to alter the
majority rule and have charged the legislature with that responsibility, but the New Hampshire court rejected this contention saying: 

"The immunity of parents from suit by their unemancipated children was not created by the legislature .... consequently it is the responsibility of the judiciary to examine this court-made rule and to make such alterations as
the interests of justice may require."

In light of the Dean case, there does not appear to be a valid reason

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8 Hewellette v. George, supra note 3; Dunlap v. Dunlap, 84 N.H. 352, 150
At. 905 (1930); Harlan National Bank v. Gross, 346 S.W.2d 482 (Ky. 1961).
9 Dunlap v. Dunlap, supra note 8, at 354, 150 Atl. at 906.
10 Dean v. Smith, supra note 1, at 413.
11 In a case of novel impression, the Supreme Court of Missouri allowed an
unemancipated child to sue her deceased parent's estate in tort, saying the rule
did not apply where the reason for the rule failed: Brennecke v. Kilpatrick, 336
S.W.2d 68 (Mo. 1960).
13 Worrall v. Moran, supra note 2.
14 Lasecki v. Kamba, supra note 5; Worrall v. Moran, supra note 2.
15 Dean v. Smith, supra note 1, at 412-413.