Gibson v. Gibson: A Further Limitation on California's Parent-Child Immunity Rule

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GIBSON V. GIBSON: A FURTHER LIMITATION ON CALIFORNIA'S PARENT-CHILD IMMUNITY RULE

The judicial doctrine that a child may not sue his parents in tort may be traced back in decisional law to the turn of the century.\(^1\) It arose primarily out of widespread judicial concern for the maintenance of family harmony and the preservation of parental authority.\(^2\) Since the landslide of cases originally accepting the doctrine of parental immunity as law,\(^3\) the courts have formulated many exceptions to the doctrine; these exceptions have become so numerous and widespread that they have nearly abrogated the doctrine.\(^4\) Perhaps the last vestige

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1. \(E.g.,\) Hewlett v. George, 68 Miss. 703, 8 So. 885 (1891), where the Mississippi Supreme Court, citing no prior case authority, said: "The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to a minor child the right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent." \(Id.\) at 711, 9 So. at 887.

2. \(See id.\) at 711, 9 So. at 887.


Recoveries have also been allowed in cases where the child was considered emancipated at the time of the suit. \(E.g.,\) Martinez v. Southern Pac. Co., 45 Cal. 2d 244, 288 P.2d 868 (1955); Shea v. Pettee, 19 Conn. Supp. 125, 110 A.2d 492 (Super. Ct. 1954); Farrar v. Farrar, 41 Ga. App. 120, 152 S.E. 278 (1930). \(See Logan v. Reaves, 209 Tenn. 631, 354 S.W.2d 789 (1962); cf. Hewlett v. George, 68 Miss. 703, 711, 9 So. 885, 887 (1891).\)

Similar results have occurred in cases where the injured child was working for his parents under a master-servant relationship. \(E.g.,\) Trevarton v. Trevarton, 151 Colo. 418, 378 P.2d 640 (1963); Dunlap v. Dunlap, 84 N.H. 352, 150 A. 905 (1930); Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743 (1952); Borst v. Borst, 41 Wash. 2d 642, 251 P.2d 149 (1952); Lusk v. Lusk, 113 W. Va. 17, 166 S.E. 538 (1932). Moreover, it has been held that a parent's employer may not claim immunity as a defense in a suit by the child for the parent's tortious conduct; respondeat superior would still render the employer liable. \(E.g.,\) Stapleton v. Stapleton, 85 Ga. App. 728, 70 S.E.2d 156 (1952); O'Connor v. Benson Coal Co., 301 Mass. 145, 16 N.E.2d 636 (1938); Wright v. Wright, 229 N.C. 503, 50 S.E.2d 540 (1948).

No immunity has been held to exist where either the parent or the child has died.

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of the old immunity doctrine, and one that continues to find support in a majority of jurisdictions, is the immunity of parents in simple negligence actions commenced by minor children.\(^5\)

In the recent decision of *Gibson v. Gibson*,\(^6\) the California Supreme Court appears to have significantly limited even this last remnant of immunity by restricting its application to cases involving "reasonable" parental conduct. This note will briefly review the doctrine of parental immunity in California in terms of the *Gibson* decision, and will also briefly consider the impact of the new standards of parental liability on the automobile guest statutes, and general liability insurance.

**The Factual Setting of Gibson**

While on an outing in the family car, the defendant (father of the minor, James Gibson) pulled to the side of the road, and directed his son to step out on the roadway and check the wheels on a jeep which was being towed with the family car. As James was checking the wheels, he was struck and injured by a passing car. James brought suit alleging that his father had been negligent in pulling off the road and directing him to step out on the roadway in the path of oncoming traffic. James contended that such negligence was a proximate cause of his injuries. The father demurred to his son's complaint, relying upon the parental immunity doctrine as a bar to the suit. The trial court followed the early California Supreme Court decision, *Trudell v. Leatherby*,\(^7\) which established the parental immunity doctrine in California, and sustained the demurrer. On appeal, the California Supreme Court specifically overruled *Trudell* and enunciated a new "reasonable parent" standard to be applied in parent-child negligence actions. The case was remanded with directions to overrule the father's demurrer.\(^8\) *Trudell v. Leatherby* was no longer good law—*Gibson v. Gibson* had marked a new departure for parental tort liability in California.

In explaining its determination in *Gibson*, the court discussed in some detail decisions from the courts of several other jurisdictions


\(^6\) 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971).

\(^7\) 212 Cal. 678, 300 P. 7 (1931).

\(^8\) 3 Cal. 3d at 923, 479 P.2d at 654, 92 Cal. Rptr. at 294.
which have partially or entirely abrogated the immunity doctrine. It may be helpful to consider briefly the position taken by these other jurisdictions as a backdrop to the court's decision in *Gibson*.

**Parental Immunity Restricted**

The first jurisdiction to substantially restrict parental immunity was Wisconsin in the 1963 case of *Goller v. White*. In *Goller* a foster child was injured while riding on the back of a piece of farm machinery at the direction of his parent. The child sued his parent for injuries allegedly inflicted due to the latter's negligence. The trial court sustained the parent's demurrer to the child's complaint on the basis of the prevailing parental immunity rule; however, the Wisconsin Supreme Court reversed the lower court and remanded the case for trial. In its decision to limit parental tort immunity, the court relied heavily upon its earlier abrogation of interspousal immunity, and noted at the outset that there appeared to be no substantial difference between the policy considerations advanced for abrogating interspousal immunity, and for similarly restricting parental immunity.

The court in *Goller* acknowledged that the immunity rule had been previously challenged and upheld in an earlier Wisconsin case, and also noted that the Wisconsin legislature had refused to abolish or modify the parental immunity doctrine. Nevertheless, the court felt

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10. 20 Wis. 2d 402, 122 N.W.2d 193 (1963).


12. 20 Wis. 2d at 410, 122 N.W.2d at 196. See W. Prosser, THE LAW OF TORTS § 122, at 866 (4th ed. 1971). Also, the court stressed that the existence of insurance was "a proper element to be considered in making the policy decision of whether to abrogate parental immunity in negligence actions." 20 Wis. 2d at 412, 122 N.W.2d at 197. It is interesting that the *Goller* court actually decided that defendant's liability policy did not cover plaintiff's injuries, thereby leaving defendant to pay the judgment without the aid of insurance. Id. at 409, 122 N.W.2d at 196.


14. 20 Wis. 2d at 412, 122 N.W.2d at 197.
constrained to modify the "judicially created immunity rule" in the face of this legislative inaction. In its decision, however, the Goller court pointed out that parental immunity for negligent acts would still be upheld in two specific situations: (1) where the alleged negligent act involves an exercise of parental authority over the child; and (2) where the alleged negligent act involves an exercise of ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care. Unfortunately, the court did not clearly explain the reasons for allowing parental immunity within the two excepted areas. At most, the opinion suggests that the court may have been strongly influenced by the general policy considerations of family harmony—specifically parent-child harmony—and the desirability of promoting parental control. The court noted that child discipline, and certain other discretionary acts of the parent in caring for the child require much more actual control over the activities of the child, than would be the case where control is exercised between spouses. In any event, these two broad areas of parental involvement would not subject the parent to tort liability under the Goller rule. The fact that all parental acts within these two broad areas were immunized from liability may well be attributable to the recognition by the court that in taking its bold step to modify the immunity doctrine, in the face of legislative refusal to act, required that the modifications be set out in definite, categorical guidelines to facilitate future decisions by courts at the trial level.

Since Goller several other states have followed Wisconsin's lead in modifying the doctrine of parental immunity. Four states have subsequently followed the Goller approach in restricting parental immunity for negligence. These jurisdictions allow the same broad parental immunity as Goller for actions which can be classified as disciplinary or discretionary. Four other jurisdictions have not established any uniform guidelines, but have limited the parental immunity doctrine in specific cases. Virginia, for example, has quite recently rejected parental immunity in automobile accident cases. Lastly, two states—New Hampshire and New York—have completely abrogated the paren-

15. Id., 122 N.W.2d at 198.
16. Id. at 413, 122 N.W.2d at 198.
tal immunity doctrine without restriction. Thus, the doctrine of parental immunity has been partially or totally eliminated in only twelve states, and its abrogation still represents the minority position.

California's New Position

In its decision to join the minority of jurisdictions which have limited parental tort immunity, the California Supreme Court, in Gibson, adopted a unique approach, even though it expressly acknowledged the policy considerations presented in earlier cases in other states. The most important element of the Gibson decision was its enunciation of the "reasonable parent standard" which is to be applied by the courts in negligence actions by minor children against their parents. In formulating this flexible standard, the court specifically repudiated the Goller rule which allowed parental immunity within the two rigid areas of parental discipline and discretionary parental acts; on this point, in fact, the California court was explicit:

First, we think that the Goller view will inevitably result in the drawing of arbitrary distinctions about when particular parental conduct falls within or without the immunity guidelines. Second, we find intolerable the notion that if a parent can succeed in bringing himself within the "safety" of parental immunity, he may act negligently with impunity.

In departing from the more restrictive Goller approach, the court in Gibson made clear its dissatisfaction with any standard that would afford the parent a virtual "carte blanche to act negligently toward his child," even within the specially circumscribed limitations set down by the Wisconsin court in Goller. On the other hand, Gibson clearly did not intend a total abrogation of the doctrine of parental immunity; indeed, the court acknowledged that some limited form of the immunity doctrine still had a legitimate place in California law.

The primary reason given by the court for retaining limited parental immunity was the fear of the total collapse of the family unit if even the most reasonable directions to a child would subject the parent to the risk of tort liability. Thus, the court formulated the "reasonable parent" standard to allow the parent to maintain the right to discipline his chil-

21. 3 Cal. 3d at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293.
22. Id. at 922, 479 P.2d at 653, 92 Cal. Rptr. at 293.
23. Id. at 921, 479 P.2d at 652-53, 92 Cal. Rptr. at 292-93.
24. "Obviously, a parent may exercise certain authority over a minor child which would be tortious if directed toward someone else. For example, a parent may spank a child who has misbehaved without being liable for battery, or he may temporarily order a child to stay in his room as punishment, yet not be responsible for false imprisonment." Id.
dren, yet to also allow suit by the child if parental conduct became unreasonable and negligent.\textsuperscript{25} Determinations as to what will constitute actions by a “reasonable parent” under the new standard will prove to be critical, for no suit will be allowed if, at the outset, the parent is found to have conducted himself reasonably.

But how is the “reasonable parent” standard to be applied? Although the court in \textit{Gibson} did not dwell on this problem, it appears that the parent’s lack of “reasonableness” must be determined by the trial judge at the outset in determining whether there is a proper basis for the child’s suit. The “reasonable parent” standard presents a bold contrast to the standard applied for determining negligent acts—that of the “reasonable man.” Under the “reasonable man” standard, if reasonable men could differ as to the question of defendant’s negligence, the issue is to be submitted to the jury for determination.\textsuperscript{26} The “reasonable parent” standard, on the other hand, is not utilized to determine whether the parent has acted negligently, but to determine whether the parent is immune from suit by the child regardless of possible negligence.

There is a striking procedural difference in the application of the two standards as well. The “reasonable man” standard in negligence actions requires the case to proceed completely to jury verdict unless as a matter of law only one decision is possible.\textsuperscript{27} The “reasonable parent” standard, on the other hand, would have to be applied at the outset by the trial judge in determining whether parental immunity would preclude suit by the child.\textsuperscript{28} That is, suit would be allowed only if the

\textsuperscript{25} “We agree with [the \textit{Goller}] approach in its recognition of the undeniable fact that the parent-child relationship is unique in some aspects, and that traditional concepts of negligence cannot be blindly applied to it.” \textit{Id.} at 921, 479 P.2d at 652, 92 Cal. Rptr. at 292.

\textsuperscript{26} Reynolds v. Filomeo, 38 Cal. 2d 5, 236 P.2d 801 (1951); \textit{CAL. EVID. CODE} \textsection 312 (West (1966)). Another factor for supposing that the determination of parental “reasonableness” will have to be made by the trial judge is the court’s policy statement in \textit{Gibson} that parent-child litigation must be minimized in the areas of parental discipline. 3 Cal. 3d at 919, 479 P.2d at 651, 92 Cal. Rptr. at 921. In order to prevent unnecessary intrafamilial friction caused by such parent-child suits, the court will likely make a rapid determination of reasonableness before the minor plaintiff is allowed to begin the presentation of his case. This approach is in accord with the desired results under the old immunity doctrine.

\textsuperscript{27} The term “reasonable parent” was perhaps poorly selected because of its similarity to the well known “reasonable man.” The word choice is unfortunate because the former refers to a type of defendant, and the latter to an idealized juror. See note 26 & accompanying text supra.

\textsuperscript{28} \textit{See} Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955). In \textit{Emery} the court ultimately allowed a minor child to sue her parents for an intentional tort, and the defendant moved to dismiss at the trial court level in order to have the judge invoke the immunity rule. A demurrer was similarly used in \textit{Martinez v. Southern...
judge initially determined that the parental action was "unreasonable"; once this determination was made, the issue of the parent's negligence would proceed to trial. If, on the other hand, the trial judge determined that the parental conduct was "reasonable," this would immunize the parent and thus conclude the matter, and the issue of parental negligence would require no further consideration.

Certainly, Gibson goes further than Goller in imposing restrictions on the immunity rule. The "reasonable parent" standard of liability will undoubtedly allow a child more opportunity to bring suit against a negligent parent than would the rigid application of the Goller standard. Nevertheless, in the interim period before California has clearly defined what "reasonable parents" do in various situations, it is entirely possible that judges applying the Gibson "reasonable parent" standard may look for guidance to the fixed Goller guidelines. This conclusion may be less anomalous than it might at first seem. The California court did not specifically reject the underlying rationale of the Goller court insofar as the maintenance of parental discipline and discretion was concerned, but rather objected only to the fact that Goller immunized all parental actions within these two broad areas, and thus could conceivably shelter even an "unreasonably" negligent parent from liability.  

The Development of the Position in Gibson

In retrospect, the limitations imposed on the parental immunity doctrine in California appear to have followed the lead of the majority of jurisdictions—first, the doctrine completely immunized the parent from suit, and then the courts systematically limited its application. In California, the limitations imposed on the parental immunity doctrine undoubtedly reflect the court's concern not only for the rights of children, but also for legitimate parental actions which are necessitated because of the unique control aspects inherent in the close parent-child relationship.

Before the decision in Gibson, California adhered to the parental immunity doctrine in all intrafamilial suits except those brought by children who had been emancipated, or children who were victims of intentional torts. These two exceptions intimated judicial dis-
satisfaction with the parental immunity doctrine, and paved the way for the court's attack in Gibson. These prior restrictions on the parental immunity doctrine reflected the basic feeling of the court that it was not judicially desirable to subject children to parental actions which would be prohibited, or at least actionable, if performed by third persons. As support for its final thrust to restrict parental immunity in negligence actions, the court in Gibson emphasized the fundamental doctrine of “compensation for injury proximately caused by the acts of another governs in the absence of statute or compelling reasons of public policy.”

It is significant that the identical reasoning had been utilized by the California court as justification for eliminating interspousal immunity. In Klein v. Klein, decided in 1962, California eliminated the long standing rule of interspousal immunity for negligent torts. Klein followed directly—both in time and approach—the court's determination in the case of Self v. Self, where the court abolished interspousal immunity for intentional torts.

The court in Gibson noted that the Klein and Self cases had eliminated “two of the three grounds traditionally advanced in support of parental immunity: (1) disruption of family harmony and (2) fraud or collusion between family ‘adversaries’.” The court found strong support in the fact that the nine years since the abrogation of inter-

34. 3 Cal. 3d at 922, 479 P.2d at 653, 92 Cal. Rptr. at 293, quoting Klein v. Klein, 58 Cal. 2d 692, 695, 376 P.2d 70, 72, 26 Cal. Rptr. 102, 104 (1962). The Gibson court also remarked: “Of course, no statute requires parental immunity, and as we have already explained, public policy compels liability, not immunity.” Id.

35. 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962). In Klein, the wife slipped and fell on a boat owned by her husband. She alleged his negligence as a proximate cause of her fall. His demurrer was sustained without leave to amend on the ground that the suit was barred by the interspousal immunity doctrine. Taking his reasoning from Self v. Self, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962), one step further Justice Peters remarked in Klein that there no longer remained any logical basis for interspousal immunity. Id. at 693, 376 P.2d at 71, 26 Cal. Rptr. at 103. Justice Peters distinguished the two concepts of interspousal immunity and parent-child immunity; and in so doing, he laid the foundation for the partial rejection in Gibson of parent-child immunity in negligence actions. Id. at 696, 376 P.2d at 73, 26 Cal. Rptr. at 105.

36. 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962). In Self, a wife filed a complaint against her husband alleging assault and battery and he asserted interspousal immunity as an affirmative defense. Summary judgment was granted on defendant's motion. In reversing the judgment, the California Supreme Court, Justice Peters writing for the majority, pointed toward the end of intrafamilial immunities. Peters emphasized that the emancipation of women and the advent of separate property rights for husband and wife had removed the only prior reasons for adoption of interspousal immunity in the area of intentional torts. Id. at 689, 376 P.2d at 68, 26 Cal. Rptr. at 101.

37. 3 Cal. 3d at 919, 479 P.2d at 651, 92 Cal. Rptr. at 291.
spousal immunity had seen few collusive or highly emotional intrafamilial suits. In this regard, the Gibson court re-emphasized the language in Klein that the court should not deny recovery to a person merely "because in some future case a litigant may be guilty of fraud or collusion."

If Klein and Self had eliminated two of the three reasons historically postulated to justify the parental immunity doctrine, Emery v. Emery brought into focus the third policy justification for parental immunity—preservation of normal parental discipline in the parent-child relationship. In Emery two minor daughters had sued their parents in California for injuries sustained in an automobile accident. The daughters alleged that their parents had directed the girls' brother to drive the family car at a time when the parents knew that the brother had been without sleep for twenty-four hours. The daughters contended that this action constituted willful misconduct on the part of the parents, and brought suit to recover for injuries suffered.

At the time suit was brought in the case, the parental immunity doctrine was in full force and effect in California, and the trial court, citing the leading case of Trudell v. Leatherby, entered summary judgment for the parents. The supreme court reversed the lower court and judicially restricted the application of the parental immunity doctrine in cases involving intentional parental torts. Writing for the majority in Emery, Justice Traynor stated the basis for the decision:

Preservation of the parent's right to discipline his minor children has been the basic policy behind the rule of parental immunity from tort liability . . . . [T]he parent has a wide discretion in the performance of his parental functions, but that discretion does not include the right wilfully to inflict personal injuries beyond the limits of reasonable parental discipline.

The court in Gibson seized upon Justice Traynor's language and reasoning in Emery and extended it to negligent torts as well. From the emphasis which had been placed on parental discretion in the use of discipline in the Emery case, however, Justice Sullivan, writing for

38. Id. at 920, 479 P.2d at 652, 92 Cal. Rptr. at 292.
39. Id.
41. For choice of law purposes the California court applied the Idaho law, since the automobile accident had occurred in Idaho. Id. at 425, 289 P.2d at 221. The court held that Idaho and California maintained similar definitions of "wilful misconduct" and also had a common view as to what was required for a tort to come within the "intentional" category. Despite defendant's objections, the court found the pertinent Idaho provisions similar enough to those of California to warrant bringing the action in the latter state. Id. at 426, 289 P.2d at 221.
42. 212 Cal. 678, 300 P. 7 (1931).
43. 45 Cal. 2d at 429-30, 289 P.2d at 223-24.
44. 3 Cal. 3d at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293.
the majority in *Gibson*, emphasized the term "reasonable" and thus extracted the "reasonable parent" as a model or standard in allowing parental immunity.\(^{45}\)

The court in *Gibson* cited the judicial trend favoring restriction of parental immunity which had been developed by the *Emery*, *Self*, and *Klein* decisions.\(^{46}\) The court reasoned that since *Klein* and *Self* had done away with two of the policy grounds for allowing parental immunity,\(^{47}\) and since *Emery* had severely restricted the third policy argument, preservation of the parental right to discipline his child,\(^{48}\) there appeared to be no significant policy justification for allowing complete parental immunity in a minor's suit alleging parental negligence where the parent has not acted "reasonably."\(^{49}\) As previously discussed, the interpretation of this new "reasonable parent" standard will require further amplification by the court in subsequent cases.

**Parental Immunity and the California Guest Statute**

The parental immunity doctrine may well have been the main reason that few cases in California have attempted to determine a child's status under the guest statute.\(^{50}\) Previously, any negligence action brought by a child against his parent could be dismissed by invoking the immunity doctrine.

The California guest statute denies recovery to anyone who, while a guest in a car, is injured in an accident proximately caused by the driver's negligence. The statute defines a guest as anyone who accepts a ride in any vehicle upon a highway without giving compensa-

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\(^{45}\) *Id.*

\(^{46}\) *Id.* at 918-19, 479 P.2d at 651, 92 Cal. Rptr. at 291. At least one legal scholar contended that the trend heralded by the decisions of *Emery*, *Klein*, and *Self* would lead to the demise of parent-child immunity. Bodenheimer, *Justice Peters' Contribution to Family and Community Property Law*, 57 CALIF. L. REV. 577, 593 (1969).

\(^{47}\) See text accompanying note 40 *supra*.

\(^{48}\) See text accompanying notes 42-45 *supra*.

\(^{49}\) Indeed the court in *Gibson* relied heavily on the parallelism of development in the spheres of interspousal and parent-child immunity. However, the parallelism was not perfectly drawn, as Justice Peters suggested in *Klein*: "It has been held in California that a child may sue his parent for an intentional tort. . . . [but] there is no logical basis for extending the distinction [between negligent and intentional torts] to the husband-wife relationship." *Klein* v. *Klein*, 58 Cal. 2d 692, 696, 376 P.2d 70, 73, 26 Cal. Rptr. 102, 105 (1962).

\(^{50}\) CAL. VEH. CODE § 17158 (West 1971); Martinez v. Southern Pac. Co., 45 Cal. 2d 244, 288 P.2d 868 (1955) (two girls were found to have given adequate compensation and were, therefore, passengers); cf. Boykin v. Boykin, 260 Cal. App. 2d 768, 67 Cal. Rptr. 520 (1968) (a wife returning from her honeymoon was found to be a guest in her husband's car). See generally Haffif, *Intra-family Immunity: The Vanishing Doctrine*, 9 CALIF. TRIAL LAW. J., Fall 1970, at 54, 57-59; Hinkle, *Intrafamily Litigation—Parent and Child*, 1968 INS. L.J. 133, 136-37 (1968).
tion for such ride. . . .” The compensation for the ride need not be in the form of money, but it must be more than simply the pleasure of the rider’s company.52

In *Martinez v. Southern Pacific Company*53 the California court was confronted with a situation where two girls, defendant’s daughter and daughter-in-law, were injured in an automobile accident allegedly caused by negligence of the defendant. The major issue which confronted the court was whether the California guest statute precluded the girls’ suit against the defendant because they were “guests” within the meaning of the statute. Under the facts of the case, the court found that both girls had given the defendant compensation for the ride, and were thus not guests, and that the guest statute was therefore not a bar to the suit.54 As to the suit by the defendant’s daughter, however, the court was also faced with the issue of the parental immunity doctrine which, if held applicable, would be a bar to the daughter’s suit against her father. Again, under the specific facts in *Martinez*, the court found that the daughter was “emancipated” and that the parental immunity doctrine was not applicable, and she was thus allowed to recover for her injuries.55

The *Martinez* case points up the anomalous situation which would have resulted under the parental immunity doctrine had the court not found the daughter to be “emancipated.”56 Both of the girls had been injured by the defendant’s negligence, both had paid for the ride, and therefore both claims were equally meritorious. However, the parental immunity doctrine would have precluded suit by the daughter, and only the daughter-in-law would have been allowed to recover for the injuries sustained.

In *Gibson* the plaintiff was not “in” a car at the time of the accident, and the guest statute was therefore not applicable.57 Nevertheless, the guest statute may play a major role in future parent-child suits and a rigid interpretation of the statute may largely undermine the beneficial impact of *Gibson* in allowing children’s suits for parental negligence. The language of the guest statute is fairly explicit in requiring

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51. CAL. VEH. CODE § 17158 (West 1971).
53. 45 Cal. 2d 244, 288 P.2d 868 (1955).
54. Id. at 253, 288 P.2d at 873.
55. Id. at 253-54, 288 P.2d at 873. The court cited no cases supporting this holding, but seemed to assume that the rule which allowed emancipated children to sue their parents was well established in California law. *Id.*
56. Id. at 254, 288 P.2d at 873.
57. See Boyd v. Cress, 46 Cal. 2d 164, 293 P.2d 37 (1956), where the court found that a rider who had alighted from a car was outside the class affected by the guest statute and was therefore allowed to recover damages.
that a guest be able to "accept" a ride. In theory, a guest must be aware of the nature of the benefit bestowed upon him before he will lose his right to sue the driver for negligence. The court has held that a child of "tender years" [under the age of seven years] is excluded from the class of riders covered by the guest statute because such a child lacks the mental capacity to "accept" a ride, and thus cannot be a guest within the meaning of the guest statute.

The court in Gibson recognized that the legislative intent manifested by the guest statute was clearly one of limiting liability in automobile accident cases. Of course, it is unlikely that the legislature took into account the possible effect of the guest statute on suits by minor children against their parents, principally because the immunity doctrine was still in force when the guest statute was enacted. However, now that "unreasonable" parental conduct has been held actionable, the courts will have to determine if the guest statute provides a special exemption. It is at least arguable that a parent's directive to his child to get in the automobile effectively denies the child any opportunity to "accept" for purposes of the California guest statute. If a child should enter the parent's car and be subsequently injured due to parental negligence, the present interpretation of the guest statute would likely deny the child recovery. And whether the parent had acted "reasonably" or not, under the Gibson standard, would be immaterial.

Recently the Virginia Supreme Court of Appeals has dealt with just such a guest statute problem. The court abrogated parental immunity in automobile accident cases, and also ruled that suit by a child under fourteen could not be barred under the guest statute because he was "incapable of knowingly and voluntarily accepting an invitation to to become a guest in an automobile so as to subject himself to the [guest statute]." The Virginia court, in thus limiting the application of the guest statute, recognized that unless an exemption from the guest stat-

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60. 3 Cal. 3d at 920, n.9, 479 P.2d at 651 n.9, 92 Cal. Rptr. at 291 n.9.
62. DeFalla v. Tuttle, 132 Cal. App. 2d 473, 282 P.2d 513 (1955). In the DeFalla case, a ten year-old girl took a ride to a Camp Fire Girls' meeting with one of the women in charge of the group, with the implied consent of her parents, and was held to be a guest; accord, Mosconi v. Ryan, 94 Cal. App. 2d 227, 210 P.2d 259 (1949); Fairman v. Mors, 55 Cal. App. 2d 216, 130 P.2d 448 (1942).
64. Id. at — , 183 S.E.2d at 195.
ute was granted to minors such as the plaintiff, the statute would un-
fairly deny them recovery.\textsuperscript{65}

A similar reinterpretation of the California guest statute and its
applicability in suits by minors against their parents may now be nec-
essary because of the \textit{Gibson} decision. Because the "reasonable parent
standard" was formulated especially to accommodate the unique nature
of the parent-child relationship, the court in \textit{Gibson} reasoned, "traditional
concepts of negligence cannot be blindly applied. . . .\textsuperscript{66}"
Perhaps, in furtherance of this viewpoint, the California courts will develop
an exception to the guest statute so that a child who is directed by his
parents to ride in a car will not be barred from recovery. This ap-
proach to the guest statute would be in accord with the judicial policy
of strict interpretation of statutory provisions limiting tort liability for
negligent drivers.\textsuperscript{67}

\textbf{Liability Insurance}

Another factor which influenced the court's policy decision in
\textit{Gibson} was the prevalence of liability insurance.\textsuperscript{68} Although the de-
cision itself did not turn on the possession of insurance by the defend-
ant, the court felt compelled to explain (in a single paragraph) that
the prevalence of insurance would have a practical effect on parent-
child suits.\textsuperscript{69} As Justice Sullivan stated, "it is obvious that insurance
does not create liability where none otherwise exists . . . [but] it is un-
realistic to ignore this factor in making an informed policy decision on
whether to abolish parental negligence immunity."\textsuperscript{70}

Although the court noted that a cause of action is not created
merely by the presence of insurance, it also pointed out that "virtually
no . . . [parent-child] suits are brought except where there is insur-
ance."\textsuperscript{71} It should also be pointed out that the negligent parent who is

\textsuperscript{65} The child in the action was seven years old, slightly above the age required
for the "tender years" category. \textit{Id.} at —, 183 S.E.2d at 191.

\textsuperscript{66} 3 Cal. 3d at 921, 479 P.2d at 652, 92 Cal. Rptr. at 292. \textit{See generally}
Kelly, \textit{Compensation and the California Guest Statute: Updating the Tangible Benefit

\textsuperscript{67} \textit{See} Rocha v. Hulen, 6 Cal. App. 2d 245, 44 P.2d 478 (1935), where the
court ruled that a five year-old girl could not "accept" a ride within the meaning of the
guest statute. In so doing, the court said that, "[t]he common law right of having re-
dress for injuries wrongfully inflicted, being lessened by [the guest statute], necessitates
strict construction, and also, that cases be not held within the provisions of such stat-
utes unless it clearly appears that it should be so determined." \textit{Id.} at 254, 44 P.2d at
483.

\textsuperscript{68} 3 Cal. 3d at 922, 479 P.2d at 653, 92 Cal. Rptr. at 293.

\textsuperscript{69} \textit{Id.}

\textsuperscript{70} \textit{Id.}

\textsuperscript{71} \textit{Id.} at 922, 479 P.2d at 653, 92 Cal. Rptr. at 293, citing James, \textit{Accident Li-
the defendant in the lawsuit probably is also the controlling influence in the decision as to whether or not the child will bring suit in the first place. Moreover, such an action would be of little value unless compensation would be derived from an outside source, such as the family insurer. This would be especially true in jurisdictions like California which impose a statutory duty upon the parent to care for his child. Of course, such parental care includes provision of medical care for injuries sustained by the child in any accident.

Clearly, then, the real impact of the Gibson decision will be most strongly felt by those companies that insure California parents. In the Gibson decision, the court has effectively enlarged the class of persons who might recover from a parent's liability policy, as well as broadened the circumstances under which such liability might arise.

The court in Gibson assumed that adequate insurance is prevalent in all areas of possible liability, and therefore the court provided no exception for uninsured parents. Although the court's assumption may be incorrect, few such suits have in fact arisen where insurance was not present.

In effect, the court in Gibson has afforded the injured child of an insured parent judicial redress against his parent's insurer; however, a similar child whose parents have no insurance would be limited to whatever compensation his parent could provide. A similar end result is achieved in Louisiana with the application of that state's direct action statute. In suits by children against their parents, the Louisiana court has held that the parental immunity doctrine is a defense personal to the parent, and therefore not available to the insurance carrier.


74. In the area of automobile accidents, this action by the court seems to be in keeping with the legislative intent manifested by California's Financial Responsibility Law. CAL. VEH. CODE §§ 16000-560 (West 1971). This measure serves to protect persons injured in auto accidents by requiring that drivers be able to compensate their victims for damages caused, at least to a statutory maximum. The usual way to assure oneself of such protection is to carry liability insurance. However, the Financial Responsibility Law deals only with compensation for automobile accidents and does not require such protection for other torts.

If a child is considered a guest within the meaning of the guest statute he will be precluded from the protection afforded by the Financial Responsibility Law. See Note, Parent and Child: Parental Immunity in Tort Abolished: Gibson v. Gibson, 3 Cal. 3d 914 (1971), 11 SANTA CLARA LAW. 478, 482 (1971), where the author seems to conclude that a child should never be considered a guest in his parent's car.

75. LA. REV. STAT. § 655 (1959).
as a bar to the injured child's suit for damages. Under the "direct action" statute, the injured child sues the insurer directly for his parent's negligence. Since the family insurance carrier cannot invoke parental immunity as a defense, damages are awarded the injured child without necessitating any restriction of parent-child immunity. On the other hand, if there is no insurance involved, parental immunity would bar the child's suit against his parent; of course, the parent would still be required to care for the child under other statutory provisions.

Perhaps it may be well for the California legislature to consider this solution to the problem in light of the Gibson decision. By enacting a direct action statute, the legislature would be allowing an injured child to recover against his parents without necessitating any further limitation of the parental immunity doctrine, or indeed any determination of the reasonableness of parental conduct in negligence cases. Such a statute would be in keeping with the spirit of the Gibson decision since the court recognized that suits by children against their parents would be unlikely unless there was insurance coverage. A direct action statute would simply avoid a lengthy judicial determination of the "reasonableness" of parental conduct in negligence cases.

Summary

The Gibson decision is yet another assertion by the California court of the doctrine that "when there is negligence, the rule is liability, immunity is the exception." In the case of controversies between par-

78. CAL. CIV. CODE § 196 (West 1971).
79. It has been suggested that in situations such as this, insurance companies might write their subsequent policies so as to exclude parent-child actions, and thus preclude Gibson's extension of duty to them. Note, Gibson v. Gibson: California Abrogates Parental Tort Immunity, 7 CAL. WEST. L. REV. 466, 478 (1971). However, it is well within the power of the California legislature to carry out the goal manifested in Gibson by requiring carriers to insure against parent-child actions. When another area of immunity was assaulted by the California court, the legislature was quick to act. Soon after the court abolished governmental immunity in Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961), the legislature enacted California Civil Code section 22.3 (now expired) as an interim measure to keep governmental immunity in force until the legislature had time to examine both sides of the issue. And in 1963, less than two years after the Muskopf decision, the Tort Claims Act, CAL. GOV'T CODE §§ 810-996.6 (West 1971), was enacted to define the areas in which tort suits might be maintained against the government.
80. See note 73 & accompanying text supra.
81. 3 Cal. 3d at 922, 479 P.2d at 653, 92 Cal. Rptr. at 293, citing Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 219, 359 P.2d 457, 462, 11 Cal. Rptr. 89, 94
ent and child, the court has recognized a need to provide a child a right of action for injuries caused by "unreasonable" parental conduct. Nevertheless, the court also firmly emphasized that a family cannot properly function without a certain freedom for the exercise of "reasonable" parental authority and discipline.

By introducing the "reasonable parent" standard, the court apparently hopes to keep that part of the old immunity doctrine which is deemed to have continuing validity and to discard the rest. This seems to reflect the trend manifested by recent cases in several states which have abrogated or limited the doctrine of parental immunity. California's unique approach allows a parent the discretion to reasonably discipline his children without delineating fixed guidelines of conduct. And since parental immunity will not be applied in a way that will shelter an "unreasonable" parent from liability, it may yet prove to be the most workable method of allowing parent-child suits. The most significant remaining issue insofar as the Gibson court's "reasonable parent" standard is concerned, will be the manner in which it will be implemented. Since the initial determination of "reasonableness" must be made by the judge rather than the jury, a case by case determination of the "reasonable parent" standard will be required which leaves tremendous discretion to the trial judge. This discretion is admittedly designed to allow a flexible "reasonable parent" standard to evolve. Apparently, the Gibson court felt that such discretion was necessary. The quality and fairness of future decisions will ultimately determine whether the court was correct.

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82. See note 9 supra.

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