2017 IL App (2d) 160812-U
No. 2-16-0812
Order filed August 29, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

STEFANIE HAYDEN, individually and as mother and next friend of AUSTIN R., a minor, Plaintiff-Appellant, v. ADAM REITHEL, DAVID REITHEL, GEORGIA REITHEL and D. REITHEL LANDSCAPING, Defendants-Appellees.	)	Appeal from the Circuit Court of Kane County. No. 15-L-40 Honorable Mark A. Pheanis, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly granted defendants' motion for summary judgment where doctrine of parent-child immunity and statutory immunity (under the Snowmobile Act) barred suit altogether.

¶ 2 Austin R. was injured while snowmobiling with his father, Adam Reithel. Austin's mother, Stefanie Hayden, brought a negligence suit, both individually and as Austin's next friend, against Adam and Adam's parents, and Adam's parent's business. The trial court entered summary judgment in defendants' favor. Stefanie appeals and we affirm.

¶ 3 The key facts that enable us to resolve this appeal are not in dispute. At the time of the incident, Austin was a seven-year-old minor, and Stefanie had full custody over Austin. Adam is Austin's acknowledged father and a child-support order governs the parties' financial arrangements for Austin's care. Since Austin's birth, however, there has been no formal visitation arrangement, but Stefanie routinely allowed Austin to spend weekends, some holidays, and a few weeks each summer with his father.

¶ 4 In 2013, Adam was living with his parents David and Georgia Reithel in rural Kane County. David and Georgia frequently spent time with their grandson Austin, and had a healthy relationship with Stefanie Hayden—the two even attended her wedding. David and Georgia own and operate "D. Reithel Landscaping" on property directly adjacent to their residential property. Adam stores two snowmobiles in the landscaping sheds on David and Georgia's property.

¶ 5 On February 3, 2013, Adam, his girlfriend Skylar, and Austin went snowmobiling on David and Georgia's property. Adam and Austin had been snowmobiling together a few times in the past. When they returned, Skylar and Austin got off the snowmobile they were on; Adam drove one of the snowmobiles into the shed to store it. What happened next is somewhat disputed, but invariably Austin, either with or without permission, got on the other snowmobile, hit the accelerator, crashed, and fractured his right femur.

¶ 6 Austin's leg required surgery and Stefanie, as Austin's guardian, incurred medical expenses for Austin's care. Stefanie filed suit, both individually (seeking contribution for medical expenses) and on Austin's behalf. Stefanie's amended complaint alleged that Adam was negligent in his supervision of Austin. Stefanie also alleged that David, Georgia, and their landscaping business, were negligent because Austin was injured on their property. The amount

Stefanie sought, either for contribution or on Austin's behalf, is not entirely clear from the amended complaint.

¶ 7 The trial court granted summary judgment in defendants' favor. The court determined that Adam was immune from suit on Austin's behalf because, under the parent-child immunity doctrine, Austin could not sue Adam for claims arising from Adam's negligent supervision. The court further determined that David, Georgia, and their landscaping business, were immune from liability under an immunity provision in the Snowmobile Registration and Safety Act (the Snowmobile Act). See 625 ILCS 40/5-1(J) (West 2014).

¶ 8 Stefanie appeals. She contends that summary judgment should not have been granted for the defendants. The purpose of summary judgment (see 735 ILCS 5/2-1005(c) (West 2014)) is to determine whether a genuine issue of material fact exists, not to try a question of fact. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*. We review the trial court's grant of summary judgment *de novo*. *Id*.

¶ 9 Stefanie's first contention is that the trial court erred when it found Adam was immune. Specifically, she argues that the parent-child immunity doctrine does not apply in this situation because Adam held no custodial rights over Austin at the time of the accident, and because snowmobiling is "not inherent to the parent-child relationship." Stefanie further observes that it is generally unlawful for a child under the age of 10 to operate a snowmobile under the Snowmobile Registration and Safety Act (the Snowmobile Act). See 625 ILCS 40/5-3(A) (West 2014). Therefore, Stefanie asserts, that even if the parent-child immunity doctrine applies, there is an exception that also applies if the underlying acts are arguably "against Illinois law."

¶ 10 Stefanie's arguments misconstrue the nature and scope of the immunity at issue and tort immunity in general. The parent-child tort immunity doctrine holds that a parent is immune from suit by his or her unemancipated minor child. This common-law immunity, which was first adopted in Illinois in 1895 (see *Foley v. Foley*, 61 Ill. App. 577, 580 (1895)), is thought to promote family harmony by preventing intrafamily litigation and the strife specifically associated with litigation. See *Nudd v. Matsoukas*, 7 Ill. 2d 608, 616 (1956). However, as we noted many years ago, it could be argued "that the injury itself, and not the consequent suit, is the factor which may upset the family unit." *Larson v. Buschkamp*, 105 Ill. App. 3d 965, 970 (1982). Nevertheless, since the doctrine's adoption, Illinois courts have attempted to define its scope and to carve out exceptions. See, *e.g.*, *Schenk v. Schenk*, 100 Ill. App. 2d 199 (establishing the parent's alleged actions must arise out of the family relationship for immunity to apply); *Nudd*, 7 Ill. 2d at 617-619 (determining willful and wanton conduct is not covered by the parental-immunity doctrine).

¶ 11 The parent-child immunity doctrine was not directly addressed by the Illinois Supreme Court until its decision in *Cates v. Cates*, 156 Ill. 2d 76 (1993). The rule that emerged following *Cates* is that parents are immune from negligence suits where the alleged conduct "constitutes an exercise of parental authority and supervision over the child or an exercise of discretion in the provision of care to the child." *Id*. at 104-105. Thus, in *Cates*, the doctrine did *not* apply to a situation where a child was injured as a result of the parent's negligent operation of a vehicle because a parent's operation of a vehicle is not conduct inherent to the parent-child relationship. *Id*. at 106; see also *Paterson v. Lauchner*, 294 Ill. App. 3d 455, 460 (1998) ("the negligent operation of any vehicle [by a parent], whether it is an automobile or a tractor, is not conduct inherent to the parent-child relationship" and therefore is not immunized).

¶ 12 This case presents a variation on that question: Whether a parent is immune from suit where it is *the child's* operation of a vehicle that causes the child's injuries. In a sense, this case is more like the rule from *Cates* than the facts in *Cates*—those facts having presented an exception to the rule. Stefanie argues that there are a number of questions of material fact, such as whether Adam knew Austin was driving the snowmobile on his own (in violation of the Snowmobile Act), or whether Adam negligently left one of the snowmobile's running without supervising Austin, or whether Adam told Skylar to supervise Austin, or whether Austin was on the snowmobile to go out one final time or to pull it into the shed. These are simply attempts to manufacture a question of fact; however, each question is immaterial. Broadly speaking, *all* of Stefanie's claims make the same essential allegation: that Adam was variously negligent in supervising Austin. Put differently, "[a]t most, the counts plead negligent acts committed in the exercise of parental discretion in the care and supervision of the [minor] plaintiff." *Malkowski v. Malkowski*, 255 Ill. App. 3d 422, 425 (1993). Thus, Stefanie's allegations, whether characterized as ordinary negligence or negligence in light of a statute, fall squarely within the immunity rule set forth in *Cates*. Because the allegations do not present any issues that were not committed to Adam's discretion in the exercise of his parental authority, Adam is covered under the larger umbrella of parent-child immunity. See *Paterson*, 294 Ill. App. 3d at 460 (holding that a parent is immune when a child is injured (by a vehicle) while parent was supposed to have been supervising child).

¶ 13 Furthermore, we reject Stefanie's argument that the parent-child immunity doctrine could not apply to Adam because Adam was Austin's noncustodial parent, and was exercising visitation time while Adam, Austin, and Skylar were snowmobiling. Stefanie also claims that while she gave Austin permission to visit Adam, she did not give permission for Austin to take

Adam snowmobiling. The distinction may be an issue of fact, but again it is not an issue of material fact. Stefanie cites no authority to support her position that either her permission could limit the scope of Adam's immunity or that Adam had no immunity because he was not Austin's custodial parent. Her failure to do so contravenes Illinois Supreme Court Rule 341(h)(7) concerning appellate briefs, and forfeits both arguments. See *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36. More importantly, there *is* authority that the doctrine of parental immunity draws no distinctions based on custody and, therefore, bars claims against noncustodial parents. See *Paterson*, 294 Ill. App. 3d at 461; *Edgington v. Edgington*, 193 Ill. App. 3d 104, 106-107 (1990); *Ackley v. Ackley*, 165 Ill. App. 3d 231, 234 (1988). We presume Stefanie's failure to disclose controlling precedent adverse to her position was inadvertent as opposed to intentional. See Ill. R. Prof. Cond. 3.3(a)(2). At any rate, it suffices to say that Stefanie's arguments concerning Austin's custody and Adam's parental rights are *not* well taken, particularly where there has never been any dispute that Adam is Austin's father. Accordingly, we determine that the trial court correctly granted summary judgment in favor of Adam under the parent-child immunity doctrine.

¶ 14 We turn now to summary judgment in favor of David and Georgia (and their landscaping business). Stefanie argues that David and Georgia were negligent for allowing Adam to supervise Austin while Austin was snowmobiling, and further that David and Georgia were negligent as property owners because Austin was injured while snowmobiling on their property. Stefanie again notes that Austin was too young to operate a snowmobile on his own under the Snowmobile Act. See 625 ILCS 40/5-3(A).

¶ 15 The Snowmobile Act is a comprehensive collection of regulations regarding snowmobiling in the state of Illinois. Among these regulations are a number of fairly broad

immunity provisions specific to private property. For example, one immunity provision states, "an owner, lessee, or occupant of premises owes no duty of care to keep the premises safe for entry or use by others for snowmobiling, or to give warning of any condition, use, structure or activity on such premises." 625 ILCS 40/5-1(I) (West 2014). Another provision announces that:

> "Notwithstanding any other law to the contrary, an owner, lessee or occupant of premises who gives permission to another to snowmobile upon such premises does not thereby extend any assurance that the premises are safe for such purpose, or assume responsibility for or incur liability for any injury to person or property caused by any act or omission of persons to whom the permission to snowmobile is granted." 625 ILCS 40/5-1(J) (West 2014)

Each of these immunity provisions contains an exception for willful or malicious failures to warn, but that exception is not relevant here. What is relevant is that it is undisputed David and Georgia gave permission to Adam and Austin (and Skylar) to snowmobile on the property, which includes both the residential parcel and the separate property used for the family business. Thus, David and Georgia (and the business) are safely within the Snowmobile Act's immunity provisions. See *Klaine v. South Illinois Hospital Services*, 2016 IL 118217, ¶ 14 (where the language of a statute is clear and unambiguous it will be applied as written).

¶ 16 Stefanie argues against this result by asserting that these provisions "do[ ] not apply" because David and Georgia "are also those Plaintiff alleges are responsible for Austin's injury." Stefanie cites no authority in support of this position—again, a violation of Illinois Supreme Court Rule 341(h)(7). However, we can forgive Stefanie's failure to cite authority because there likely is none. Immunities, whether they are derived from common law or by statute, unless waived, are legal exemptions that defeat lawsuits. See IMMUNITY, Black's Law Dictionary

(10th ed. 2014) ("**immunity** (14c) **1.** Any exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental unit. *Cf.* impunity"). If immunities could be defeated by the simple act of filing suit, then they would not be immunities.

¶ 17 We, therefore affirm the judgment of the circuit court of Kane County. To the extent Stefanie sought contribution for Austin's medical expenses, the proper forum remains available per the parties' longstanding child-support order as opposed to a separate freestanding negligence action largely brought in Austin's name.

¶ 18 Affirmed.