

Fall, 2016

AEI CLAIMS LAW QUIZ

ENGAGED COUPLES AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CLAIMS

[Tort Theories and Defenses, Para. 2.02]

FACTS: On November 17, 2011 Rudolph was visiting his fiancée, Porter, and her daughter, Gomez, at their apartment in New Haven, Connecticut. There was a knock on the door. Rudolph went to the door, opened it, and was overpowered by two masked men with guns. Porter and Gomez witnessed the attack. A fight ensued, during which Porter and Gomez fled from the apartment to get help. While Porter and Gomez were out of the apartment, Rudolph was shot in the head. Porter and Gomez returned immediately after the shot was fired and found Rudolph in a pool of blood on the building's second floor landing. As a result of witnessing these events Porter and Gomez claimed to have suffered extreme emotional distress.

Porter and Gomez sued the landlord for negligent infliction of emotional distress (NIED). Specifically, the plaintiffs alleged that their extreme emotional distress was caused by the defendant's negligence in failing to provide adequate security. The landlord argued that the bystander NIED claims should be dismissed because the plaintiffs did not have the required close relationship with Rudolph. The landlord argued that according to Connecticut law the engagement between Porter and Rudolph was not the type of family relationship required to support such claims. The plaintiffs responded that although they did not live with Rudolph the couple's engagement should be considered sufficient to allow recovery of emotional distress damages.

QUESTION: Does an unmarried but engaged, non-cohabiting couple have the kind of close relationship required to recover bystander emotional distress damages?

ANSWER: No, according to the Superior Court of Connecticut, Judicial District of New Haven in *Rudolph v. The Muhammad Islamic Center*, 2014 Conn. Super. LEXIS 888 (Conn. Super. 2014). The court in *Rudolph* held that it would not extend bystander NIED claims to include engaged couples who were not cohabiting.

The court began its analysis by reviewing *Clohessy v. Bachelor*, 675 A2d 852 (Conn. 1996), the case in which the Supreme Court of Connecticut first recognized a cause of action for bystander NIED. Bystander emotional distress is a specific type of NIED that involves a claimant's anxiety for witnessing the death of or serious injury to another. In these cases the claimant is himself physically

unhurt. In *Clohessy*, the court said: “Under certain circumstances ... we conclude that a tortfeasor may owe a legal duty to a bystander. Consequently, a tortfeasor who breaches that duty through negligent conduct may be liable for a bystander’s emotional distress proximately caused by that conduct.”

By recognizing a cause of action for bystander NIED the Supreme Court of Connecticut acknowledged a legitimate public interest in protecting against foreseeable psychic injury, but it also recognized the need to protect against unlimited liability. The court did not want a defendant’s liability to extend to every bystander who witnessed an accident. Instead, the court said: “The class of potential plaintiffs should be limited to those who because of their relationship with the victim are expected to suffer the greatest emotional distress. When the right to recover is limited in this manner, the liability bears a reasonable relationship to the culpability of the negligent defendant.”

Seeking to strike a balance between two legitimate interests – compensating plaintiffs for foreseeable psychic injury and protecting against unlimited liability – the Connecticut Supreme Court adopted the “reasonable foreseeability” rule formulated by the California Supreme Court in the landmark case of *Dillon v. Legg*, 69 Cal. Rptr. 72 (Cal. 1968). According to this rule, a plaintiff must allege the following conditions to state a cause of action for bystander emotional distress:

- ◆ he is closely related to the injury victim, such as the parent or the sibling of the victim,
- ◆ the emotional injury of the bystander was caused by the contemporaneous sensory perception of the event or conduct that caused the injury,
- ◆ the injury suffered by the victim must be substantial, resulting in death or serious physical injury, and
- ◆ the bystander’s emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response.

In the *Rudolph* case the issue before the court was whether the couple’s engagement was sufficient to satisfy the close relationship requirement of *Clohessy*.

In *Clohessy* the Connecticut Supreme Court held that the parent and sibling of a child killed in an accident could bring an action for bystander NIED. The court did not discuss what other relationships might also qualify as close enough. Since *Clohessy*, neither the Connecticut Supreme Court nor any Connecticut appellate court has addressed the issue of what qualifies as a close relationship in a NIED claim. Some Connecticut trial courts have addressed the issue, however, and predictably have extended the recognized close relationships to spouses. Some of the trial courts have included more distant relationships, such as engaged couples. All of these trial court holdings, however, have required the plaintiff fiancé to allege something more than an engagement.

In *Miller v. Curtis*, 1999 Conn. Super. LEXIS 2948 (Conn. Super. 1999), the court held that a man who witnessed the death of his cohabiting fiancée when she was struck by a negligent driver could recover under the theory of bystander NIED. Both the engagement and cohabitation demonstrated the intimate nature of their relationship and satisfied the *Clohessy* test. The *Miller* court found persuasive the analysis of the New Jersey Supreme Court in *Dunphy v. Gregor*, 642 A2d 372 (N.J. 1994)¹:

The distinction ... must be made between ordinary emotional injuries that would be experienced by friends and relatives in general and those indelibly stunning

emotional injuries suffered by one whose relationship with the victim at the time of the injury is deep, lasting, and genuinely intimate. Persons engaged to be married and living together may foreseeably fall into that category of relationship. Given the widespread reality and acceptance of unmarried cohabitation, a reasonable person would not find the plaintiff's emotional trauma to be remote and unexpected.

¹ In *Dunphy* the New Jersey Supreme Court held that a cohabiting partner who was engaged to the victim could satisfy its version of the close relationship requirement. The plaintiff in *Dunphy* watched as her fiancé was struck by the defendant's car as he changed the tire of a friend's car, and ultimately died of his injuries.

In *Izquierdo v. Ricitelli*, 2004 Conn. Super LEXIS 635 (Conn. Super. 2004), a case involving a man who observed a dog maul his fiancée, the court held that since the engaged couple was cohabiting, the plaintiff satisfied the close relationship requirement. In *Yovino v. Big Bubba's BBQ, LLC*, 896 A2d 161 (Conn. Super. 2006), the court extended the rationale of *Miller* and *Izquierdo* to a slightly different factual scenario, and held that a man who witnessed the death of his fiancée in an automobile accident could recover on his bystander NIED claim even though the couple wasn't living together because the required closeness of their relationship was established by the fact that he had donated his right kidney to her. The judge in *Yovino* cited *Graves v. Estabrook*, 818 A2d 1255 (N.H. 2003)², in which the New Hampshire Supreme Court said:

Whether an engaged couple is closely related hinges not on whether they have obtained a marriage license from the state, but ... should take into account the duration of the relationship, the degree of mutual dependence, the extent of common contributions to a life together, the extent and quality of shared experience, and ... whether the plaintiff and the injured person were members of the same household, their emotional reliance on each other, the particulars of their day to day relationship, and the manner in which they related to each other in attending to life's mundane requirements.

² In *Graves*, the New Hampshire Supreme Court held that a cohabiting fiancé could recover bystander NIED damages despite the lack of a blood or marital relationship. The plaintiff in *Graves* witnessed her fiancé being struck by a car, resulting in injuries that led to his death the following day.

In *Biercevicz v. Liberty Mutual Ins. Co.*, 865 A2d 1267 (Conn. Super. 2004), the court granted a motion to strike a bystander NIED claim on the grounds that the complaint lacked an allegation that the engaged couple resided together. In *Biercevicz* the court emphasized the need to protect against unlimited liability and cited *Mendillo v. Board of Education*, 717 A2d 1177 (Conn. 1998), a case in which the Connecticut Supreme Court declined to recognize claims by minors for loss of parental consortium. The court in *Biercevicz* reasoned that if the Connecticut Supreme Court "is unwilling to expand liability to children in a loss of consortium situation, it is difficult to imagine that the same court would allow expansion of liability to engaged couples who are not cohabiting."

Most other jurisdictions have adopted some form of the reasonable foreseeability rule as well as the close relationship requirement. Most if not all of the jurisdictions that have these requirements hold that the relationships between the victim and immediate family members – parents, children, siblings, and spouses – are sufficiently close. Beyond immediate family members, however, there are substantial variations among the states. The application of the close relationship requirement has led several courts to deny bystander NIED claims to a victim’s fiancé, cousin, aunt, uncle, niece, nephew, cohabiting significant other, and best friend.