New Developments in Torts: CA Supreme Court Expands Emotional Distress Claims for Family Members

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Extension of claims for emotional distress for relatives of victims:

On July 22, 2024 the California Supreme Court issued its opinion in *Downey v. City of Riverside* [16 Cal. 5th 539] which expanded claims for emotional distress by relatives of victims in tort cases. In *Downey*, the Court held "*awareness of an injury causing event*" was sufficient to state a claim for NIED by a relative even when they did not percipiently and contemporaneously witness the accident or tortious event themselves. This case represents a significant expansion of claims for a relative contemporaneously aware of an injury to a family member *even if they are not on the scene to witness it*. Until *Downey*, "California courts ... recognized the plaintiff's right to recover in negligence for serious emotional distress suffered as a result of *witnessing* injuries inflicted on a close relative... Only if the plaintiff "is present at the scene of the injury producing event at the time it occurs and is then aware that it is causing injury to the victim." [Emphasis Added] *Dillon v. Legg* (1968) 68 Cal. 2nd 728; *Thing v. La Chusa* (1989) 48 Cal. 3rd 644, 668. *Downey* answers the question: "What if the plaintiff is aware that injury has been inflicted on the victim, but not of the defendant's role in causing the injury?"

In *Downey*, the plaintiff Mother was giving driving directions to her daughter over a cell phone when her daughter was severely injured in a car crash. The Mother heard the collision and its aftermath, but did not see what had caused it. The Mother asserted a claim for NIED. The *Downey* Court held "It is awareness of an event that is injuring the victim – not awareness of the defendant's role in causing the injury – that matters." The Court clarified its ruling by stating "... When the bystander witnesses what any layperson would understand to be an injury producing event – such as a car accident, explosion, or fire, the bystander may bring a claim for negligent infliction of emotional distress based on the emotional trauma of witnessing injuries inflicted on a close relative. This is true even if the bystander was not aware at the time of the role the defendant played in causing the victim's injury." Significantly, in *Downey* case, the plaintiff Mother brought an action against the city for a dangerous or defective condition of the roadway (presumably under Government Code §835). The defendant city initially demurred on the basis that Mother was not aware of *how* the city's alleged negligence had caused the accident. The California Supreme Court says that doesn't matter as long as the mother was aware, even without being present, contemporaneously of the accident and the injury to the daughter. For those who practice medical malpractice law, *Downey* is important because it discusses cases where victims died from medical malpractice

when relative may be aware or witness the event but *not know* the cause.

Downey gives many examples of cases where relatives have been permitted to recover even when they were not on the scene of the accident. See, for example: *Wilkes v. Hom* (1992) 2 Cal. App. 4th 1264 [mother who had seen, heard and felt explosion and fire that killed one of her daughters and injured another was permitted to recover even though she did not see the infliction of injuries] and *In Re Air Crash Disaster Near Cerritos California*, (1992) 960 7F2d. 1421 [Plaintiff returning from a grocery store to her home where she left husband and 3 children sees her home on fire due to a midair jet collision with private plane could recover although she did not know the cause of the crash at the time she observed her house to burn and family to suffer.] *Downey* held plaintiff need not have understood the causal connection between defendant's conduct and the injury to relatives when they perceived those relatives being injured. This case provides a basis for a claim by a relative when they know that their relative has been injured even if they did not know how or why the defendant's actions caused that injury.

Courts recognize the role of schools in bullying cases:

On June 13, 2025 the Second District Court of Appeal issued an opinion in *E. I. V. El Segundo Unified School District* (2025 Cal. App. LEXIS 380) held that under Education Code §44807 school authorities have a duty to supervise the conduct of children on school grounds at all times. This case was an appeal from a $1 million jury verdict awarded to a female middle school student who suffered egregious bullying from classmates of which the school was aware and took no action. What is significant about *E. I.* is that the student notified the school of the bullying activity over several months in the school, who had the authority and ability to expel the aggressor, and did not do so. The Court of Appeal emphasized that policies of the school formed a portion of the standard of care to be applied and violation of school's policies constituted a basis for finding liability. This is an excellent case to read when one is confronted with a student client who alleges they been bullied, injured or neglected in school and explains how important it is both to have a history of bullying in the fact pattern and to be precise in pleading these particular causes of action.