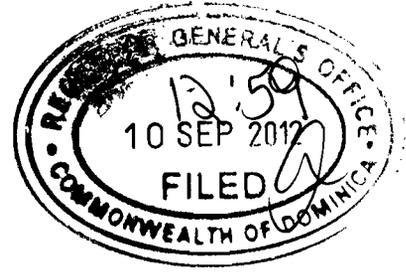


**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF Dominica
CLAIM NO. DOMHCV2002/0291**



BETWEEN:

CHARLESWORTH MORANCIE

Claimant

and

MARLON GUISTE

Defendants

MARIETTE GUISTE

Before:

The Hon. Justice Brian Cottle

Appearances:

Mr. Michael Bruney for the Claimant

Mr. David Bruney for Defendant 2

No appearance Defendant 1 or Counsel

2012: January 31st
February 13th
September 10th

JUDGMENT

[1] **COTTLE J:** The claimant instituted the present claim against both defendants for damages for assault and battery on the claimant by the first defendant. The incident occurred on 6th January, 2000 when the first defendant was then a minor. The second defendant is his mother. The first defendant filed no defense. The second defendant filed no witness statement and did not attend at the trial. The evidence of the claimant though tested by cross examination was therefore uncontroverted.

[2] The facts revealed by the claimant's evidence were that the first defendant violently assaulted the claimant with a cutlass, inflicting on him severe wounds to both arms. The left wrist and forearm are permanently deformed and four fingers were severed from the right hand. It is clear that the first defendant was responsible for the severe injuries to the claimant. The issue which confronts the court is what liability if any attaches to the second defendant?

[3] Mr. David Bruney who represented the second defendant argued that despite the fact that the first defendant was a minor at the time of the assault, by the time the matter came up for trial, he was of full age. In the circumstances no responsibility could attach to his mother. Mr. David Bruney was asked to supply the court with legal authorities in support of his contention. Despite the passing of several months no such authorities have been provided.

[4] Mr. Micheal Bruney submitted that the court could find liability in the second defendant on the basis that she failed in her duty to exercise supervision and control of the first defendant and as a result of her failure the claimant was injured. As I understand it, parents are not strictly liable for the torts of their children. The circumstances will determine what liability the parents must bear in particular cases. Halsbury's Laws of England 4th Edition Vol 24 para 424 says:

"Where, however, a child causes injury to others by the use of dangerous things, the parent or any other person in charge of the child may be liable if the parent or other person has control of the dangerous thing which causes the injury or is negligent, whether in permitting the child to use a thing which is dangerous in itself or known to be dangerous or capable of causing danger to others, or in not exercising proper control or supervision of the child."

[5] Mr. Micheal Bruney submits that the court should conclude that the second defendant failed in the exercise of her duty of supervision and control of the first defendant by keeping a dangerous instrument like a cutlass where her 15 year old son could access it and by not supervising her minor child to prevent the assault. He cited the case of Newton v Edgerley [1959] 1 WLR 1031. In that case a minor disobeyed his father's instruction and shot another child. He used an air gun. The court found the father liable. The reasoning was that the father failed to exercise reasonable care by preventing his son from having the gun at all or by not giving him careful enough instructions about handling the weapon.

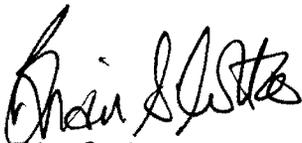
[6] In the present case there is no evidence as to where the cutlass was kept or how the first defendant got hold of it. In any event this court notes that it is far from uncommon to find a cutlass in a Caribbean home to which a 15 year old boy will have unrestricted access. It is a tool rather than a weapon like a gun, despite its obvious potential for abuse.

[7] It is true that the second defendant has led no evidence but it still remains for the claimant to establish a case against her. I find that he has failed to do so. There is thus no need for me to consider whether his present age, now over 18 would immunize the first defendant's mother from

liability for the misdeeds of the first defendant committed during his minority. I enter judgment for the claimant against the first defendant

- [8] On the issue of quantum Mr. Michael Bruney cited several cases. These include Ronald Fraser v Joe Dalrymple et al ANU HVC2004/0523 and Aschelle Hypolite v Joanne Page SLU HCV2008/0805. Counsel did not advert to the case of CCAA Ltd v Julius Jeffrey Civil appeal 10 of 2003 from St. Vincent and the Grenadines, although the injuries in that case are similar to the injuries in the present claim.
- [9] When I consider all of the authorities cited I am content to make an award to this claimant for pain, suffering and loss of amenities of \$100,000.00. The special damages pleaded were not challenged. These amount to \$28,419.00. I am content to make an order in that amount.
- [10] The final order then is for judgment for the claimant against the first defendant for \$128,419.00 plus prescribed costs of \$18,552.00




Brian Cottle
High Court Judge