Factor of Age in the Comparative Negligence Analysis

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Typically, when one party's negligence injures another party, the party at fault may be sued. When it's unclear who's at fault, or when there is more than one person to blame, the question then becomes one of comparative negligence.

Comparative negligence can sometimes be asserted as a defense to a negligence claim. Comparative negligence simply means that a plaintiff can be held accountable for her own negligence. If the defendant successfully shows that the plaintiff contributed to her own injuries, the plaintiff will only recover if her negligence is less than that of the defendant, meaning less than 50 percent. Moreover, the plaintiff's monetary recovery will be further reduced by any percentage of the negligence a jury determines to be attributable solely to the plaintiff. If, for example, the Plaintiff is awarded $100,000, but the jury determines that she was 20% at fault, her award will be reduced by $20,000.

All this arithmetic is designed to figure out, as fairly as possible, who is at fault and who should recover. And during this evaluation, the age of the plaintiff is often a major factor. Age speaks to a concept called "standard of care", which refers to how careful or attentive it is reasonable to expect someone to be. You're liable when you don't meet the standard of care, among other things.

South Carolina courts have held that a person's age is relevant to the applied standard of care and that a minor can be held to be comparatively negligent for her injuries. In other words, in determining the standard of care, you would use a different standard for children, than you would use for adults. Specifically, a minor under the age of fourteen years is not held to an adult standard of care. Instead, a minor under the age of fourteen years should be judged by the standard of behavior to be expected of a child of like age, intelligence, and experience under like circumstances.

Applying this math, then, a minor who is a plaintiff can be held partially responsible for her own injuries. Obviously, the car accident example isn't a good one here – minors don't drive. But a twelve year-old who was injured because she was running on the deck of a swimming pool, despite clearly visible signs requiring her to walk, could be held partially liable for her injuries if a jury determines that she should have read, and understood, the signs.

These guidelines allow the jury to consider the circumstances of each case, taking into account the minor's age, life experience, education, intelligence, and judgment. Therefore, a child under fourteen years of age may be, but is not necessarily, negligent for failing to obey an adult

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standard of care. On the other hand, the jury will be directed to apply an adult standard of care to the action of a minor who is fourteen years of age or older but who may have not yet reached the maturity or judgement of an adult.

Ultimately, analyzing a plaintiff's comparative negligence will be driven by the facts of each case, and the age of the minor plaintiff is an important factor.

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