

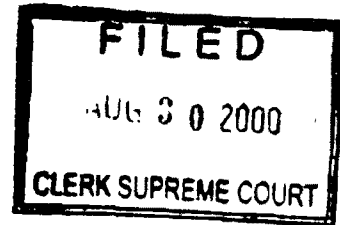
IN THE COURT OF APPEALS OF IOWA

No. 0-419 / 99-1481
Filed August 30, 2000

JASON TAYLOR,
Plaintiff-Appellant,

vs.

LINDA KENNEDY and SHANNON KENNEDY,
Defendants-Appellees.



Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge.

Plaintiff appeals a jury verdict in favor of defendants on his negligence claim. **AFFIRMED.**

Robert B. Deck, Sioux City, for appellant.

Michael J. Frey of Hellige, Lundberg, Meis, Erickson & Frey, Sioux City, for appellees.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Plaintiff, Jason Taylor, appeals from a jury verdict in favor of defendants, Linda and Shannon Kennedy, on plaintiff's negligence claim. Plaintiff contends the court incorrectly instructed the jury with regard to the negligence of a child. We affirm.

On August 21, 1986, a group of boys, including plaintiff Jason Taylor, began a crab apple throwing contest with a group of girls. During play, Jason was struck in the eye by a rock or crab apple thrown by Shannon Kennedy. At the time, Jason was six and Shannon was nine. On September 11, 1998, Jason filed suit against Shannon and her mother, claiming negligence. A jury trial took place on August 11 and 12, 1999. The jury returned a verdict in favor of the defendants.

Jason appeals. He contends the trial court erroneously instructed the jury regarding the negligence of a child.

I. Scope of Review. We review claims of erroneous jury instructions for errors at law. *Lovick v. Wil-Rich*, 588 N.W.2d 688, 692 (Iowa 1999).

II. The Merits. The trial court gave the following instruction:

"Negligence" means failure to use ordinary care. For a child, ordinary care is the care which a reasonable child of the same age, intelligence and experience would use under similar circumstances. Negligence is doing something a reasonable child of the same age, intelligence and experience would not do under similar circumstances or failing to do something a child would do under similar circumstances.

Jason argues the phrase "reasonably careful child" should have been substituted for "reasonable child."

We find Jason's first argument elevates form over substance. Uniform instruction 700.2 reads:

- "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonable careful person would not do under similar circumstances, or failing to do something a reasonable careful person would do under similar circumstances.

A note to the uniform instruction states the following language is to be added if a party is a child: "At the time of the injury, (name) was a child. Ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would do under similar circumstances." See I Civ. Jury Instructions 700.2 (1990). An instruction must fairly convey the law applicable to the issue presented. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). Although the uniform instruction for adults uses the 'reasonably careful' language, the trial court's instruction correctly and fairly conveys the law as found in uniform instruction 700.2 and in the case which established the standard of care for children, *Peterson v. Taylor*, 316 N.W.2d 869, 873 (Iowa 1982) (adopting Restatement (Second) of Torts § 283A as the standard of care governing children). We are unaware of any determination in Iowa case law that requires the phrase "reasonably careful child" to be substituted for "reasonable child." Since *Peterson* continues to be the law of the state, we cannot fault the trial court for applying it. We find Jason's first argument meritless.

Jason also contends the trial court first should have instructed the jury under Iowa Civil Jury Instruction 700.2, defining negligence and ordinary care as those concepts apply to adults, before defining those terms with regard to

children. We disagree. We find no authority for this proposition and none has been cited. The trial court committed no error of law by instructing the jury only on the standard of care governing a child.

AFFIRMED.