

1012 PARENTS' DUTY TO PROTECT MINOR CHILD

Parents must use ordinary care to protect their children from dangers which are known or should have been known or anticipated by the parents. Although parents are not required to do the impossible in keeping their children safe, they must use ordinary care to see that their children are given reasonable protection from hazards and dangers, and their duty increases where special circumstances exist.

In determining whether (a parent) (parents) used ordinary care to protect (his) (her) (their) child(ren), you may consider the age of the child(ren) and the traits and disposition of children of that age. You should also consider that parents are expected to know the traits and dispositions of their children.

COMMENT

This instruction was approved in 1974 and revised in 1985. The comment was reviewed without change in 1989.

Reber v. Hanson, 260 Wis. 632, 635, 51 N.W.2d 505, 507 (1952); Hansberry v. Dunn, 230 Wis. 626, 284 N.W. 556 (1939); Matson v. Dane County, 177 Wis. 649, 189 N.W. 154 (1922); Monrean v. Eastern Wis. Ry. & Light Co., 152 Wis. 618, 623, 140 N.W. 309-10 (1913); Ewen v. Chicago & N.W. Ry., 38 Wis. 613, 628 (1875).

The duty of the parents is ordinarily joint, as where both had a duty to be aware of the whereabouts of a child playing in the yard; in such a case, the negligence in the comparison question is not divisible but must be assessed as a unit. Reber, supra. If one parent clearly is not negligent, as in the case of a father who is not present while the child is riding with its mother, the negligence of the mother will not be imputed to the father. Hansberry, supra.

While the court, in Bell v. Duesing, 275 Wis. 47, 80 N.W.2d 821 (1957), intimates that it is improper to inquire about the negligence of a parent who is not a party to the action, the better rule would seem to be contra under the general theory that the negligence of a nonparty may be inquired into.