

The Morrison Law Journal  
March 2008  
Volume III, Edition 3

Tragedy With No Legal Consequence? Court Of Appeal Rules That A Homeowner Has No Duty To Supervise A Child In The Vicinity Of A Residential Swimming Pool When The Child's Parent Is Also Present

By: Edward F. Morrison, Jr., Esq.  
Christina S. Karayan, Esq.

In an important decision which will impact California tort cases, the California Court of Appeal, Second Appellate District, recently ruled that a homeowner has no legal duty to supervise a minor child in the vicinity of a residential swimming pool when the child's parent is also present.

This decision was issued in the matter of Padilla v. Rodas (2008) 160 Cal.App.4th 742 (herein, the "Padilla" case). The facts of the Padilla case are unfortunately not unique, but certainly tragic. The consequence of the case, insofar as California tort law is concerned, however, will likely be significant.

The salient facts of the Padilla case are as follows: Eddie Padilla was born in 2002 and was the son of plaintiff Leslie Padilla ("Ms. Padilla"). On June 27, 2004, Ms. Padilla and her then two year old son Eddie visited the home of Ms. Padilla's sister and her sister's partner, Ismael Rodas ("Mr. Rodas"), which was located in Granada Hills, a residential area of the San Fernando Valley. The residence had a swimming pool which was accessible through sliding glass doors from the living room, doors on the right side and left side of the house, and an iron gate from the driveway. The iron gate was allegedly open and could not be locked.

Ms. Padilla and her son stayed the night. At about 6:00 p.m. the next day, Ms. Padilla's sister left to go to work, leaving behind Ms. Padilla, her son Eddie, Mr. Rodas and a seven year old cousin and a nine year old cousin of Eddie. Around 7:00 p.m., Ms. Padilla and Mr. Rodas were watching Eddie and his two cousins play in the driveway. Mr. Rodas then received a telephone call on his cell phone and went to the side of the house near the open iron gate to take the call.

Eddie then requested that his mother provide him a glass of water and she went inside the house for about 5 minutes, telling the two cousins to make sure that Eddie did not go out into the street.

Ms. Padilla then emerged from the house a few minutes later. When Eddie could not be located, she and Mr. Rodas went to the backyard and found Eddie, who did not know how to swim, facedown in the swimming pool. Eddie was pronounced dead shortly thereafter.

Ms. Padilla then filed a wrongful death lawsuit against Mr. Rodas, which presumably was tendered to Mr. Rodas' insurer. The lawyers hired to retain Mr. Rodas then filed a Motion for Summary Judgment on the bases that (i) Mr. Rodas had no duty to supervise Eddie and breached no obligation to supervise him and (ii) even if the iron gate did not have a self-latching mechanism, as required by the Los Angeles Municipal Code, Ms. Padilla could not prove that the condition of the gate was a cause of the accident<sup>1</sup>.

The trial court granted summary judgment in favor of Mr. Rodas. On Appeal, the Court of Appeal addressed the theory of liability based on negligent supervision (which it deemed to be a question of law).

In its holding, the Court of Appeal noted that the legal duty of supervision rested on the exercise of ordinary care and cited the factors set forth in the landmark decision in Rowland v. Christian (1968) 69 Cal.2d 108 ("Rowland"):

- (1) the foreseeability of harm to the plaintiff;
- (2) the degree of certainty that the plaintiff suffered injury;
- (3) the closeness of the connection between the defendant's conduct and the injury suffered;
- (4) the moral blame attached to the defendant's conduct;
- (5) the policy of preventing future harm;
- (6) the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach; and
- (7) the availability, cost and prevalence of insurance for the risk involved.

In its decision, the Court of Appeal ruled that the Rowland criteria militated against a finding of legal duty on the part of the homeowner. The Court of Appeal noted that Ms. Padilla knew that Mr. Rodas was not watching the minor children at the time of the accident and in fact she knew that Mr. Rodas had left the children in the presence of Ms. Padilla. The Court of Appeal also ruled that placing a duty on the homeowner under those circumstances would:

---

<sup>1</sup> The Motion for Summary Judgment was also based on the defense claim that Ms. Padilla had executed a release of the homeowner's insurer, but the minute order granting the Summary Judgment did not address the issue of the release and the Court of Appeal did not address the issue, either.

“unreasonably burden social and family relationships, requiring homeowners to provide baby-sitting services for their guest’ young children when the children’s parents also were on the premises. Imposition of such a duty on homeowners would make them insurers of their guests' children's safety even when the parents are also present on the premises, a burden that is beyond all reasonable expectations of both homeowners and their guests.”

The Court of Appeal acknowledged that the issue was one of first impression in California but noted that Courts in other jurisdictions had done so, citing decisions issued in Illinois, Arkansas, Alabama and Georgia.

The Padilla case will certainly have some impact on California tort cases although its reach may be somewhat limited given the facts of that case. For example, a plaintiff attorney could attempt to distinguish the Padilla case based on circumstances where the parent of a young child leaves her child under the supervision of the homeowner. Plaintiff’s counsel could also point out that Ms. Padilla’s attorney did not raise an argument involving the duty to install a separate fence around the pool until oral argument at the Court of Appeal, and therefore had waived a claim based on that theory. Nevertheless, absent further appellate review, the Padilla case will stand as an important decision in California decisional law.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Christina S. Karayan is a senior associate of The Morrison Law Group, a professional corporation. Their biographies can be viewed at [www.morrisonlawgroup.com](http://www.morrisonlawgroup.com).

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Kameelah Hakeem at The Morrison Law Group at 213 356-5504 or [hakeem@morrisonlawgroup.com](mailto:hakeem@morrisonlawgroup.com).

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.