State Supreme Court Decision Lets Children Sue Their Parents—Sometimes

By Katherine White

The N.C. Supreme Court, in a July 1992 decision, ruled for the first time that children may sue their parents for inflicting willful and malicious injuries. The case, Doe v. Holt, *involved two sisters who had sued their father for monetary damages after he was convicted of sexually abusing them. In its decision, the Court re-examined the parent-child immunity doctrine, a long-standing principle that holds—in the interest of family harmony—that minor children may not sue their parents for their wrongful acts. The new ruling means that parents now can be forced to pay for services, such as mental health therapy or counseling, needed to help their children recover from intentional abuse.*

Sally and Jane Doe were only three and four years old when their mother died in a 1978 car accident. But that tragedy was just the beginning of a nightmare that continued for more than a decade. Their father, Frank Holt of Stokes County, was convicted in 1990 of sexually abusing the girls from 1980 to 1989. The sisters charged that their father had abused them emotionally and physically—raping them repeatedly and forcing alcoholic beverages on them. Holt pled guilty in the case and is now serving a prison sentence for his crimes.[1] His daughters are trying to mend the emotional devastation he wrought.

Sally and Jane's odyssey into the court system, in an attempt to make their father pay for their injuries, has implications far beyond their immediate situation.[2] From the horrors of their experience, the N.C. Supreme Court, in *Doe v. Holt*,[3] recognized for the first time that children may sue their parents for monetary damages when the parents inflict willful and malicious injury.[4] For such victims, the ruling means that parents may be forced to pay for services necessary to help their abused children recover, including mental health counseling and therapy. Ironically, however, the Doe sisters decided not to pursue the case after the Court decision—in part, because their father had no money.

Parent-Child Immunity Doctrine Dates Back to 1890s

In reaching its decision, the Court re-examined the parent-child immunity doctrine, a time-honored principle that generally prevents children from suing their parents for wrongful acts. The doctrine was first recognized in this country in 1891 and was initially applied by the N.C. Supreme Court in a 1923 case, *Small v. Morrison*.[5] In that case, the Court observed that "the government of a well ordered home is one of the surest bulwarks against the forces that make for social disorder and civic decay. It is the very cradle of civilization, with the future welfare of the commonwealth dependent, in a large measure, upon the efficacy and success of its administration. Under these conditions, the State will not and should not permit the management of the home to be destroyed by the individual members thereof, unless and until the interests of society are threatened."[6]

The Court stated in the *Small* ruling that:

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"There are some things that are worth more than money. One of these is the peace of the fireside and the contentment of the home.... It is doubtful if any age promises a sweeter remembrance than that of a happy childhood, spent in the lovelight of kindly smiles and in the radiance of parent-child devotion."[7] In recognizing the doctrine of parental immunity as good public policy for North Carolina, the Supreme Court observed that courts in other states had applied it "to the most extreme case possible, that of the ravishment of a minor daughter by her father."[8] Thus, for decades the courts of this state have refused to allow lawsuits that could threaten family harmony.

State Court Re-examines Parent-Child Immunity Doctrine

But does the rationale of the *Small* ruling apply in family situations of long-standing abuse? Does the Court's pious vision of family life in 1923 mesh with the harsh realities of victims like Sally and Jane Doe? Recent studies have shown that the sisters' travails were far from unique. The N.C. Division of Social Services reports that sexually abused children accounted for nearly 5 percent (1,500) of the 32,011 children for which county social workers were able to substantiate charges of child neglect and abuse in the 1992–93 fiscal year.[9] Those records identify parents and grandparents as the perpetrators in 95 percent of all reports of neglect and abuse.[10]

Other studies have reported that sexual abuse of children may be even more widespread than shown by state records. For instance, a national survey of more than 2,000 adults in 1985 found that 27 percent of the women and 16 percent of the men said they had been sexually abused as children.[11] Most studies lump incest in with all sexual-abuse cases, whether committed by close relatives or not, even though childhood sexual abuse generally takes place within families.[12]

Such realities may have prompted the state Supreme Court in 1992 to re-examine the parent-child immunity doctrine when applying it to cases of intentional abuse such as incest. The Court did so by narrowly reading all North Carolina cases that had involved parent-child immunity—none of which had addressed a child's lawsuit over the willful and malicious acts of the parents. In an opinion by Justice Burley B. Mitchell Jr., the Court concluded that earlier North Carolina cases involved only *negligent* acts of parents, not *intentional and willful* acts.

"[T]he case before us is not one in which we are asked to modify or abolish the parent-child immunity doctrine," Justice Mitchell wrote. "The question before us here is whether the parent-child immunity doctrine, as it has existed in North Carolina since *Small*, bars tort claims for injuries unemancipated minors have suffered as a result of a parent's willful and malicious conduct. We conclude that the doctrine does not bar such claims."[13]

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—N.C. Supreme Court,
Small v. Morrison, 1923

Mitchell continued, "It would be unconscionable if children who were injured by heinous acts of their parents such as alleged here should have no avenue by which to recover damages in redress of those wrongs. Where a parent has injured his or her child through a willful and malicious act, any concept of family harmony has been destroyed. Thus, the foremost purpose supporting the parent-child immunity doctrine is absent, and there is no reason to extend the doctrine's protection to such acts."[14]

Justice Louis B. Meyer, in a concurring opinion, agreed with the result but not with the reasoning. "I fear this is one of those cases where bad facts make bad law," Justice Meyer wrote.[15] "My reticence to join the majority opinion arises not from its result but from my fear of how the law it announces will be applied in future cases in this particular area, and surely many will be spawned by this case."[16]

Justice Meyer said that the General Assembly should make any changes to the parent-child immunity doctrine. "[T]he legislature is in a far better position than this Court to gauge the wisdom of changing the public policy of the state," he wrote, while noting that legislators had amended the doctrine (in 1975) to allow inter-familial lawsuits involving car accidents.[17]

Despite his deference to the legislature, Justice Meyer concluded that the Court could appropriately make exceptions to the parent-child immunity doctrine, particularly in cases of sexual abuse. The Court could reach the same result for Sally and Jane Doe, he wrote, by having the justices "erect some hurdles that would weed out the truly marginal cases. One method would be to raise the standard of proof required for recovery from a preponderance of the evidence to clear, cogent, and convincing evidence."[18]

Court Decision Gets Mixed Reviews

Reaction to the Supreme Court ruling has been varied. Although some academics have panned the legal reasoning of the decision, child abuse experts have lauded the holding of the case. "This is a good decision, and it represents another logical step forward in the extension of children's

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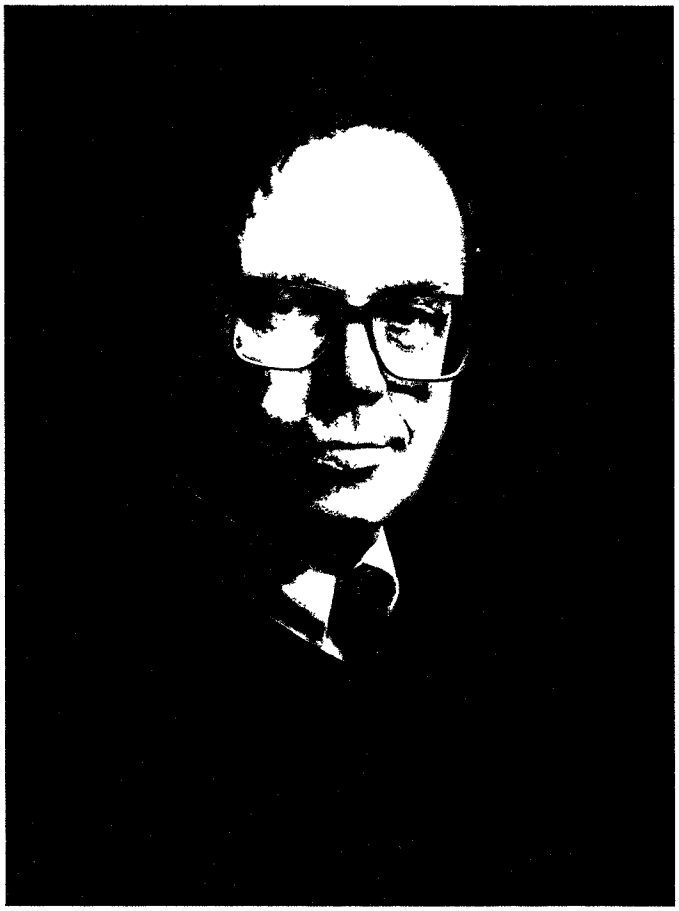
—*JUSTICE BURLEY B. MITCHELL JR., N.C. SUPREME COURT,* DOE V. HOLT, *1992*



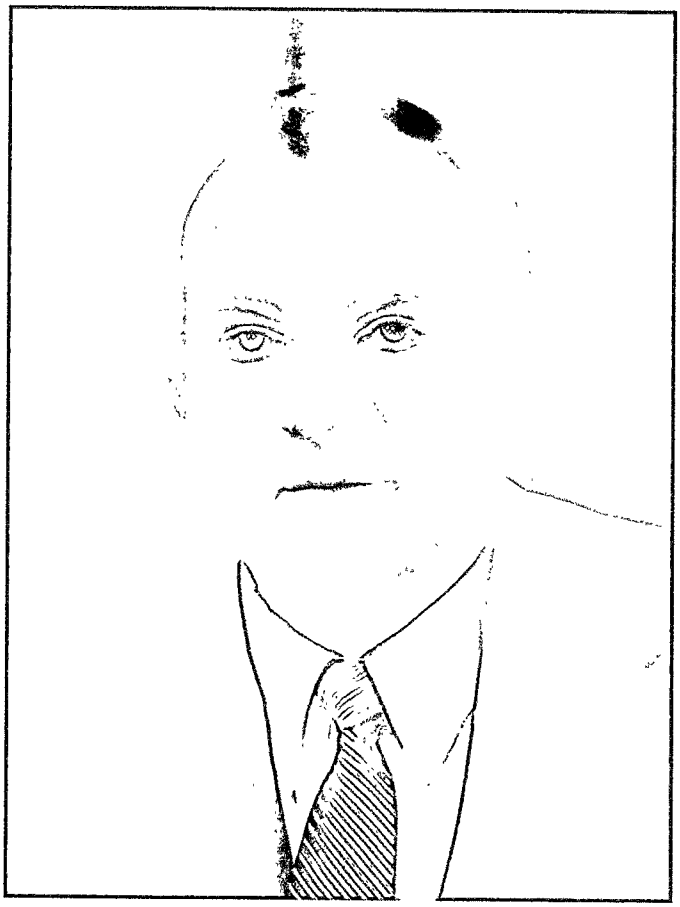
rights," says John Niblock, president of the N.C. Child Advocacy Institute, a Raleigh-based nonprofit group. The doctrine of parental immunity has been losing support, he says, because it fails to account for children who come from dysfunctional families. "I think it's an outdated concept," Niblock says. "That's why we have a need for this sort of ruling."

The ruling could have important implications for other pending or potential child-abuse cases, Niblock says, even though it's unfortunate that the Doe sisters were unable to collect retribution from their father. "The idea is important, and it could help the next kid," he says. "I think there are probably a lot of children out there who have been seriously harmed by their parents and their parents have not been willing to pay for treatment. This will provide them with help."

Ilene Nelson, administrator of the Guardian ad Litem program for the Administrative Office of the Courts, says the ruling means that abused children can try to make an offending parent pay the costs of their therapy. She acknowledges, however, that as a practical matter most children in her program have parents with "an empty pocket." Still, it is an option, she says, and recovery can be sought under homeowner liability insurance policies in many states. Children have successfully recovered damages from their parents' homeowner insurance policies that don't specifically exclude such claims, she says, in states that have abolished the parent-child immunity doctrine or created exceptions to it. "It's been done a lot," she says.

The treatment needs of abused children can substantial, says Katie Holliday, executive director of the Children's Law Center in Charlotte. "We are not just talking about damages to account for pain and suffering," Holliday says. "We're talking about years and years of treatment. . . . Some victims are just unable to function normally in life."

The academic side of the legal community has not been as supportive of the decision. Calling the opinion "stealthy judicial legislation," a note in the *North Carolina Law Review* criticized the Court for invading a subject matter best left for the legislature.[19] The note by Mebane Rash agreed



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—*JUSTICE LOUIS B. MEYER, N.C. SUPREME COURT,* DOE V. HOLT, *1992*

with Justice Meyer that the Court should have created an exception to the parent-child immunity doctrine, rather than assert that the doctrine did not apply to cases of intentional wrongdoing. "Instead of muddying the waters of parent-child immunity, [*Doe v. Holt*] could have been a watershed case either abolishing the doctrine or creating a clearly enunciated exception to the doctrine's general rule of immunity," Rash wrote. "A narrow holding crafting an exception to the doctrine of parent-child immunity in cases of sexual abuse would have limited the court's ruling, allaying any fear of subsequent suits against parents for reasonable chastisement."[20]

An editorial in *The Charlotte Observer*, while generally supporting the decision, voiced similar concerns: "North Carolina's Supreme Court has waded into the murky waters of parent-child relationships with a decision that is absolutely correct but may open courthouse doors to all sorts of complaints the court never intended to hear. . . . For example, will advocates for children file lawsuits for spankings or paddlings?"[21]

Some lawyers disagree with the view that the Supreme Court overstepped its authority in the case. Elizabeth J. Armstrong, a lawyer who participated in the *Doe v. Holt* case, argues that the subject is best left to the courts—which is where the parent-child immunity doctrine originated. "It is up to the judiciary to interpret its own creation in a manner consistent with its purpose," she wrote in an *amici curiae* (friends of the court) brief.[22]

Armstrong observes, however, that the North Carolina Supreme Court went further than it had to in the *Doe v. Holt* case. Other state courts have reviewed the parent-child immunity doctrine and concluded that sexual abuse cases are beyond the scope of the doctrine, without extending it beyond the sexual acts. Armstrong says that abuse can be willful and malicious even if it has nothing to do with sexual acts. It is the willful and malicious conduct that should be punished, not the particular form it takes, she said.

"This is a good decision, and it represents another logical step forward in the extension of children's rights. . . . I think [parental immunity is] an outdated concept. That's why we have a need for this sort of ruling."

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Court Ruling Invites Further Questions

The North Carolina Supreme Court took the broad view in its approach. And, as is consistent with judicial interpretation of legal principles, there probably will be additional cases to further refine the questions raised by the ruling. Such as: At what point does parental conduct move beyond neglect and become willful and malicious? Or, what conduct is considered within the permitted scope of a parent's right to discipline a child?

The case also raises another question: Who will decide where to draw the line between abuse and parental discretion in punishment—the courts or the legislature? The General Assembly passed no new laws dealing with parent-child immunity during its 1992 or 1993 sessions. Meanwhile, the state Supreme Court has not been presented with any more related cases. In this vacuum, the case of *Doe v. Holt* develops a public policy that the Court initiated 60 years ago.

In developing that policy, the courts must wrestle with the fundamental legal debate over strict constructionism versus judicial activism, says Ron Bogle, a district court judge from Hickory. That is, should the courts strictly interpret the law or be instruments of social change? "I believe that there needs to be a sense of both," Bogle says. "My concern about this case is when courts just reach the conclusion they desire, and then try to justify or rationalize that decision without saying what they really mean to do. It leads to amazingly troublesome law."

Bogle predicts that the ruling could produce a flood of lawsuits because the Supreme Court failed to specify the difference between reasonable parental discretion and willful and malicious acts. "If a parent spanks a child and leaves a bruise, is this a willful act that is beyond the bounds of reasonable parental discretion and an injury to the child?" he asks. "Many will argue that it is. I do not disagree with the result, but I question some of the logic to reach the result."

Doe v. Holt also stands as an invitation for legislators to clarify state law regarding parental

authority.[23] As *The Charlotte Observer* wrote: "On several occasions the Supreme Court has in effect invited the General Assembly to consider the parent-child immunity doctrine and legislate a reasonable standard for such lawsuits. Now that the court has opened the door to more suits, the legislature may be more inclined to debate this controversial area of public policy."[24]

North Carolina would not be the first state to re-examine parent-child immunity: the doctrine increasingly has come under fire across the nation.[25] At least 18 states have abolished parental immunity or do not recognize it, and at least seven more states have limited its scope.[26] The N.C. Supreme Court acknowledges that trend in *Doe v. Holt*,[27] but stands by an earlier Court ruling that the "doctrine will continue to be applied as it now exists in North Carolina until it is abolished or amended by the legislature."[28]

FOOTNOTES

[1] Mr. Holt pled guilty to charges of second-degree rape and second-degree sexual offense. He was sentenced to 25 years in prison in a Stokes County court on April 3, 1990. His projected parole date is August 1999.

[2] After Holt's conviction on criminal charges, the girls filed a civil action against their father through a guardian ad litem on April 5, 1990, in the Superior Court of Forsyth County. They claimed that they were hurt by their father's abuse and were entitled to damages to compensate them. The trial court dismissed the case on the ground that the parent-child immunity doctrine barred such claims. The Court of Appeals reversed that finding. The father then sought discretionary review from the Supreme Court.

[3] *Doe v. Holt*, 332 N.C. 90, 418 S.E.2d 511 (1992). For a news account of the Court's decision, see The Associated Press, "Court says molested girls can sue father," *The News & Observer*, Raleigh, N.C., July 18, 1992, p. 6B.

[4] In *Hawkins v. Hawkins*, 331 N.C. 743 (1992), decided one month before *Doe v. Holt*, the Supreme Court affirmed an award of punitive damages to a woman who had sued her adoptive parents for assault and battery, based on alleged sexual abuse. The opinion, however, did not address the issue of parent-child immunity.

[5] *Small v. Morrison*, 185 N.C. 577, 118 S.E. 12 (1923).

[6] *Ibid.* at 584, 118 S.E. at 15.

[7] *Ibid.* at 585, 118 S.E. at 15.

[8] *Ibid.* at 579-80, 118 S.E. at 13 (citation to the extreme case omitted); (quoting 20 *Ruling Case Law*, Sect. 36, at 631, William M. McKinney et al., eds., 1929).

[9] *Central Registry Reports of Child Abuse & Neglect, Selected Statistical Data*, N.C. Department of Human Resources, Division of Social Services, FY 1988–89 through FY 1992–93. Numbers do not represent an unduplicated count. For example, a child may be reported more than once in a given year; also, there may be more than one child in a given report.

[10] *Ibid.* Parents, as defined here, include biological, adoptive, step, and foster parents. Grandparents include biological and step grandparents. Also, victims may have more than one perpetrator.

[11] "The Pain of the Last Taboo," *Newsweek*, Oct. 7, 1991, p. 70.

[12] *Ibid.*

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CHILDREN'S LAW CENTER, CHARLOTTE

[13] *Doe v. Holt*, 332 N.C. at 93-94, 418 S.E.2d at 513.

[14] *Ibid.* at 96-97, 418 S.E.2d at 514.

[15] *Ibid.* at 97, 418 S.E.2d at 515.

[16] *Ibid.* at 100, 418 S.E.2d at 516.

[17] *Ibid.* at 98, 418 S.E.2d at 515. Also see N.C.G.S. 1-539.21, which states, "The relationship of a parent and child shall not bar the right of action by a minor child against a parent for personal injury or property damage arising out of the operation of a motor vehicle owned or operated by such parent."

[18] *Ibid.* at 100, 418 S.E.2d at 516.

[19] M. Mebane Rash, "The North Carolina Supreme Court Engages in Stealthy Judicial Legislation: *Doe v. Holt*," 71 N.C. L. Rev. 1227 (1993).

[20] *Ibid.*, pp. 1241, 1245. For discussions of the parent-child immunity doctrine prior to *Doe v. Holt*, see Harlin R. Dean Jr., "It's Time to Abolish North Carolina's Parent-Child Immunity, But Who's Going to Do It?," 68 N.C. L. Rev. 1317 (1990). Also see Mason P. Thomas Jr., "Child Abuse and Neglect: Historical Overview, Legal Matrix, and Social Perspectives," Part I, 50 N.C. L. Rev. 293-349 (1972), and Part II, 54 N.C. L. Rev. 743-776 (1976).

[21] Unsigned editorial, "Murky waters," *The Charlotte Observer*, July 22, 1992, p. 14A.

[22] Amici Curiae Brief (N.C. Association of Women Attorneys and N.C. Academy of Trial Lawyers) at 10, *Doe v. Holt*, No. 379PA91, (N.C. Supreme Court, Dec. 20, 1991).

[23] Katie Holliday of the Children's Law Center in Charlotte points out that other legislation is essential for ensuring the legal rights of abused children. For example, legislators considered but failed to pass a bill, S.B. 905, in the 1993 session that would have extended the statute of limitations for children seeking retribution for parental abuse.

[24] See note 21 above.

[25] See Dean, note 20 above, p. 1317.

[26] *Ibid.*, pp. 1317, 1328. According to Dean, states that do not recognize parent-child immunity include: Alaska, Arizona, California, Hawaii, Kansas, Kentucky, Maine, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Vermont, and Wisconsin. Other states that limit the doctrine include: Delaware, Iowa, Massachusetts, Nevada, Oklahoma, Virginia, and Washington.

[27] *Doe v. Holt*, 332 N.C. at 93.

[28] *Ibid.*, quoting *Lee v. Mowett Sales Co.*, 316 N.C. at 495, 342 S.E.2d at 886.