

## COA Opinion: Comparative-fault statute does not consider tortious conduct following injury

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In *Slager v Kid's Kourt, LLC*, No 292856, the Court of Appeals held that where a defendant is the factual and proximate cause of an injury, a subsequent tortfeasor that is not part of the causal chain may not be held liable for the injury under Michigan's comparative-fault statutes.

In *Slager*, a child sustained an injury to his finger while on Defendant's premises that required surgery. Defendant acknowledged liability, but argued that the child's parents were nonparties at fault under the comparative-fault statutes because they negligently failed to take the child to doctor-recommended physical therapy that would have significantly reduced the damages resulting from the child's injury. The trial court, relying on *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18 (2009), held that the parents were immune from suit under the parental-immunity doctrine, and because the parents had no legal duty to obtain medical care for their child, they could not be held liable under the comparative-fault statutes as a matter of law.

The Court of Appeals affirmed on different grounds, concluding that any presumed negligence by Plaintiff relating to post-operation care was not part of the causal chain that led to the child's injuries, but was rather a separate tort that was not subject to comparative-fault liability. Because Plaintiff was immune from liability under *Romain*, no liability could be imposed on Plaintiff for negligence occurring after the operation.

In *dissent*, Judge Murray argued that the majority impermissibly sidestepped the issue decided by the trial court—whether parental immunity precluded allocation of fault under the comparative-fault statutes—and instead decided that the statutes were inapplicable for reasons not raised by the parties. Judge Murray concluded that the parents had a common law duty to provide medical care to the child, parental immunity did not abrogate that duty, and the case should be reversed and remanded for trial on whether the parents were nonparties at fault for their inactions relating to post-operation medical care.