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Torts--Damages--Mother's Recovery for Emotional Trauma and Physical Injury When Not Within the Zone of Impact

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Virginia statute and its effect as applied to a factual situation similar to that of the Stone case was considered in 60 W. VA. L. REV. 387 (1958). The conclusion was reached that the West Virginia court would hold that the car owner could not be held liable because the intervening act of the thief would constitute the sole proximate cause of the plaintiff's injury. Although the precise question has never come before the West Virginia court, a recent federal district court decision applying West Virginia law, *West Virginia ex rel. Poulos v. Fidelity and Casualty Co.*, 263 F. Supp. 88 (S.D.W. Va. 1967), would seem to support that conclusion. The defendant car owner in that case did not leave his keys in the ignition, but rather negligently failed to turn the ignition to the lock position. In holding the car owner not liable for injuries caused by the negligent driving of a thief, the court deemed it "significant" that the car owner did not leave his keys in the car to attract the attention of a passerby. Logically, however, the result would seem to have been the same even if the keys had been left dangling from the ignition.

Torts—Damages—Mother's Recovery for Emotional Trauma and Physical Injury When Not Within the Zone of Impact

While negligently operating his motor vehicle, Legg collided with Dillon's infant child. The collision resulted in the child's death. Dillon witnessed the accident, but did not fear for her own physical safety. She alleged that because of Legg's negligence she sustained emotional disturbance, and shock and injury to her nervous system which caused physical and mental pain and suffering. The superior court granted a summary judgment in favor of Legg, and Dillon appealed. *Held*, reversed. Emotional trauma and physical injury caused by a mother's witnessing the death of her child as a result of defendant motorist's negligent operation of an automobile established a prima facie tort. *Dillon v. Legg*, 69 Cal. Rptr. 72, 441 P.2d 912 (1968).

This case represents a significant advance in the field of torts since it is the first case in the nation to allow recovery under these circumstances. Generally, it has been held that a person who witnesses an injury to a third person caused by a negligent tort-feasor cannot recover for physical and mental injuries proximately caused thereby unless he was within the zone of physical danger. *See* Annot., 18 A.L.R.2d 220 (1951). The instant case marks an exception to this general rule.