Evidence--Infant's Pleading as a Judicial Admission

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From the foregoing authorities it would appear that West Virginia would permit recovery for depreciation as an element of damages but that such depreciation must be recovered in the original action rather than in a subsequent proceeding upon the bond.

George Charles Hughes III

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Evidence—Infant's Pleadings as a Judicial Admission

P, an infant, by his next friend, brought an action against his mother for injuries sustained when he fell out of and under an automobile being backed out of a driveway by her. The complaint charged the mother with wilful and wanton negligence and was later amended to include the automobile manufacturer and automobile dealer as defendants, charging them with negligence as manufacturer and seller of an automobile with a defective door, alleging that the door came open and caused P to fall from the vehicle. D—manufacturer and D—seller contended that P had made a judicial admission as to their non-liability by charging his mother with wilful and wanton negligence. The trial court entered a judgment on the verdict for all defendants. Held, reversed. An infant cannot be bound by the admissions of others. The pleadings made on behalf of an infant cannot be regarded as judicial admissions against him and the infant is not bound thereby. Anderson v. Anderson, 187 N.E.2d 746 (Ill. App. 1963).

It appears to be the undisputed rule that admissions made by guardians ad litem are not binding upon their infant wards. This rule applies to admissions made by guardians ad litem or next friend whether as parties complainant or as parties defendant. The reason for the rule is the protection of persons of tender years who are unable to look out for their own interests. The rule requires the opponent of the infant to prove all of his claims by his own evidence. White v. Joyce, 158 U.S. 128 (1894); Kingsbury v. Buckner, 134 U.S. 650 (1889); Annot., 14 A.L.R. 87 (1921).

The West Virginia authority on this point is in accord. It was held in Childers v. Milam, 68 W. Va. 503, 70 S.E. 118 (1911), that the admissions in the answers of adult defendants cannot bind infant defendants in the cause. A decree against the rights of infants standing only on the admissions must be reversed.
Glade Mining Co. v. Harris, 65 W. Va. 152, 63 S.E. 873 (1909), held that an answer of an infant can not be read against him, and that an infant is never to be prejudiced by an act, default, or admission of a guardian ad litem.

In Stolte v. Larkin, 110 F.2d 226 (8th Cir. 1940), it was held that in an action brought by the guardian of a minor against motorists, for injuries sustained by the minor, the complaint which contained admissions against the interest of the minor was not admissible against him as a judicial admission. The court further noted that the weight of authority favors the rule that a guardian of a minor cannot make admissions affecting substantial rights of the minor so as to bind the latter; and this rule applies to admissions in pleadings where the minor is either a plaintiff or a defendant. In support of its conclusion in the Stolte case, the court cited Childers v. Milam, supra; Glade Mining Co. v. Harris, supra; and Holderby v. Hagan, 54 W. Va. 341, 50 S.E. 437 (1905).

The West Virginia law on the point in issue was decided at an early date and appears not to have been altered since. In Laidley v. Kline, 8 W. Va. 218 (1875), while ruling in accord with the above authority, the decision noted that a court failed to discharge its duty when it did not carefully guard the interests of infants against wrong and injustice. Accord, Calhoun County Bank v. Ellison, 133 W. Va. 9, 54 S.E.2d 182 (1949).

In the principal case the court noted that the pleading of an infant cannot be his product in the sense that he had anything to do with it, so the rule that the pleading of a party may be used as a judicial admission against him could not apply to an infant. The court based its reasoning on the fact that a two-year old could not possible answer questions and relate facts necessary to aid his counsel in preparing the case for trial. This argument seems to progressively lose merit as the age of an infant litigant advances. If an infant is presumed to be a competent witness upon reaching the age of fourteen years, another infant of similiar maturity and mental development would certainly be of some assistance in preparing a case for trial. It would appear that the rule in the principal case should be more rigidly enforced in favor of an infant defendant than to benefit an infant plaintiff whose counsel was less than adequate.

The West Virginia Rules of Civil Procedure would not affect the previous holding of the West Virginia Supreme Court on this
point. The Rules do not alter or change substantive law. See Rule 17(c) relative to guardians ad litem.

A final point of interest in this area was noted in Clade Mining Co. v. Harris, supra. There the court, in deciding a question of first impression for West Virginia, held that where a record shows error as to a minor defendant, the judgment will be reversed, even though there was no appeal on the part of the minor. This is demanded of the court, it being the duty of the court, as the guardian of infants, to protect their rights.

Ralph Charles Dusic, Jr.

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Insurance—Waiver and Estoppel as Satisfying Condition of Proof of Loss in Fire Insurance Policies

Ps, husband and wife, brought an action to recover against Ds, two fire insurance companies, upon one policy insuring Ps' dwelling and another policy insuring their household property. Both policies required, as a condition precedent to recovery, a proof of loss, signed and sworn to by the insured. The trial court entered judgment for Ps. Held, affirmed as to the dwelling insurance as Ps "substantially" complied with the proof of loss requirement by submitting to an examination under oath by the insurer's counsel. Reversed in the case of the household property policy. The court found as a matter of law that a list of household property lost in the fire, improperly valued at cost, and mailed to the adjuster was not a "proof of loss" notwithstanding: (1) Ps were "ignorant and illiterate"; (2) Ps lost their policies in the fire which policies were replaced by the solicitor with memoranda showing issuance of the policies but not mentioning the conditions precedent to D's recovery; (3) Ps were not apprised of the requirement to submit proofs of loss—on the contrary, both the solicitor and the adjuster allegedly told Ps that it would not be necessary to file any papers other than the list of household property and the values thereof which should be, and was, mailed in an envelope provided by the adjuster. Nor were the words and acts of D's agents sufficient to bind D by waiver and estoppel as D's agents did not have such authority. Maynard v. National Fire Ins. Co., 129 S.E.2d 443 (W. Va. 1963).

The result of the finding in the personal property policy case appears to be harsh. The court refused the jury finding that the