

STATE OF MICHIGAN  
COURT OF APPEALS

---

NATALIE NICOLE HAUSWIRTH, a minor, by  
her next friend, PAUL HAUSWIRTH,

Plaintiff-Appellant,

v

BARBARA HAUSWIRTH,

Defendant-Appellee.

---

UNPUBLISHED  
September 28, 2006

No. 269413  
Oakland Circuit Court  
LC No. 05-066137-NO

Before: Borrello, P.J., and Jansen and Cooper, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 16, 2001, defendant took her nearly three-year old daughter, plaintiff Natalie Hauswirth, to a shopping mall. While the parties were riding down an escalator in the mall, Natalie's hand was caught in the escalator's moving parts and her left ring finger was severed. Natalie, by her next friend, sued her mother alleging negligence. The trial court granted defendant's motion for summary disposition, holding that defendant was immune from suit under the parental immunity doctrine set forth in *Plumley v Klein*, 388 Mich 1, 8; 199 NW2d 169 (1972).

We review the grant of summary disposition where the issue concerns immunity de novo as a question of law. *Spikes v Banks*, 231 Mich App 341, 349; 586 NW2d 106 (1998).

The trial court relied on the doctrine of parental immunity set forth by our Supreme Court in *Plumley*:

“A child may maintain a lawsuit against his parent for injuries suffered as a result of the ordinary negligence of the parent. Like our sister states, however, we note two exceptions to this new rule of law: (1) where the alleged negligent act involves an exercise of reasonable parental authority over the child; and (2) where the alleged negligent act involves an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care.” [*Plumley, supra* at 8.]

As this Court has noted, “[t]he first *Plumley* exception has been extensively discussed in decisions of this Court,” and a significant line of cases have held “either explicitly or implicitly, that claims of negligent supervision of a child are barred under the first *Plumley* exception.” *Ashley v Bronson*, 189 Mich App 498, 501-502; 473 NW2d 757 (1991) (citations omitted). This Court has also found that the exercise of authority and supervision over one’s child includes, in addition to discipline, “the providing of instruction and education so that a child may be aware of dangers to his or her well being.” *Paige v Bing Constr Co*, 61 Mich App 480, 484; 233 NW2d 46 (1975). See also *McCallister v Sun Valley Pools, Inc*, 100 Mich App 131, 138-140; 298 NW2d 687 (1980).

We reject plaintiff’s argument that defendant was not engaged in supervision of her child when the accident occurred. Plaintiff argues that the issue is not one of negligent supervision, but rather that “defendant mother negligently executed or implemented her intention to aptly hold her child’s hand.” We note defendant’s testimony that she checked to be sure that her child’s shoes were tied, helped her onto the escalator, and held the child’s right hand the whole time. Regrettably, the child’s left hand somehow got caught in the escalator. We find that defendant’s actions in assisting her child on the escalator fall squarely into the realm of parental supervision. This action therefore falls into the first *Plumley* exception,<sup>1</sup> “involv[ing] an exercise of reasonable parental authority over the child.” *Plumley, supra* at 8.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper

---

<sup>1</sup> We would add that even if *Plumley* did not apply, and we were bound by an ordinary negligence standard, we note that the tragic outcome notwithstanding, there is no evidence to support the claim that defendant’s supervision of her daughter was even negligent.