



1998

# Notes: Eagan v. Calhoun: A Child May Bring a Wrongful. Death Action against a Parent for the Intentional Killing of the Other Parent

Dena M. Dietrich  
*University of Baltimore School of Law*

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>



Part of the [Law Commons](#)

## Recommended Citation

Dietrich, Dena M. (1998) "Notes: Eagan v. Calhoun: A Child May Bring a Wrongful. Death Action against a Parent for the Intentional Killing of the Other Parent," *University of Baltimore Law Review*: Vol. 28: Iss. 1, Article 5.  
Available at: <http://scholarworks.law.ubalt.edu/ublr/vol28/iss1/5>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

*EAGAN v. CALHOUN*: A CHILD MAY BRING A WRONGFUL  
DEATH ACTION AGAINST A PARENT FOR THE  
INTENTIONAL KILLING OF THE OTHER PARENT

I. INTRODUCTION

American jurisprudence suggests that all people have a right to address and receive just compensation for wrongs committed against them.<sup>1</sup> However, this right does not always extend to all persons. Maryland courts, for instance, adhere to the doctrine of parent-child immunity that prevents civil liability between parents and children for torts and other wrongs.<sup>2</sup>

After the parent-child immunity doctrine was first adopted by the Mississippi Supreme Court in 1891,<sup>3</sup> many states subsequently adopted it in some form, including Maryland.<sup>4</sup> The doctrine has since evolved to prevent children from suing their parents in situations such as automobile torts and wrongful death actions.<sup>5</sup> Despite adopting the parent-child immunity doctrine, the Court of Appeals of Maryland has crafted several exceptions to it. Recently the court of appeals held that when one parent intentionally causes the other parent's death by voluntary manslaughter, the parent-child immunity doctrine does not preclude the child's wrongful death action

- 
1. See W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 1, at 5-7 (5th ed. 1984).
  2. See *Renko v. McLean*, 346 Md. 464, 697 A.2d 468 (1997) (reaffirming the vitality of the parent-child immunity doctrine to preserve the integrity of the family unit and parental authority); *Warren v. Warren*, 336 Md. 618, 650 A.2d 252 (1994) (refusing to extend parent-child immunity to stepparents); *Yost v. Yost*, 172 Md. 128, 190 A. 753 (1937) (holding that a minor child cannot sue a parent for acts of partial negligence incident to the parental relationship); *Schneider v. Schneider*, 160 Md. 18, 152 A. 498 (1930) (establishing that a guardian cannot sue his ward).
  3. See *Hewellette v. George*, 9 So. 885, 887 (Miss. 1891) (holding that minor children are forbidden from asserting claims of civil redress for personal injuries suffered at the hands of their parents) *overruled by* *Glaskox v. Glaskox*, 614 So. 2d 906, 907 (Miss. 1992).
  4. See *infra* note 90 and accompanying text. However, many states have since abrogated or modified this doctrine to combat its harsh results. See *infra* note 43 and accompanying text.
  5. See *Renko*, 346 Md. at 480, 697 A.2d at 474 (quoting *Glaskox*, 614 So.2d at 911).

against the parent who committed the wrong.<sup>6</sup>

In *Eagan v. Calhoun*,<sup>7</sup> the mother of two minor children was killed by their father.<sup>8</sup> Under then-existing Maryland law, it appeared as though the suit could fit within one of the exceptions to the parent-child immunity doctrine, depending upon how egregious the court considered the underlying facts.<sup>9</sup> The court of appeals held that, not only did voluntary manslaughter fit within one of the previously adopted exceptions to this restrictive doctrine, but that it did so as a matter of law.<sup>10</sup>

This Note will examine the parent-child immunity doctrine as it has developed in several jurisdictions, with particular emphasis on how Maryland deals with parent-child immunity issues. Part II begins by tracing the emergence of the parent-child immunity doctrine in general and its eventual abrogation in several states.<sup>11</sup> Part II then focuses on how the doctrine developed in Maryland and the exceptions Maryland courts have made to the doctrine in lieu of abrogating it.<sup>12</sup> Part II concludes by examining the interplay between the parent-child immunity doctrine and Maryland's wrongful death statute.<sup>13</sup>

Part III of this Note discusses *Eagan v. Calhoun*,<sup>14</sup> a case decided by Maryland's highest court that recognized a category of cases that the parent-child immunity doctrine will not apply to as a matter of law.<sup>15</sup> The *Eagan* court's holding permits a child to bring a wrongful death suit against a parent who intentionally kills the child's other parent.<sup>16</sup> Part IV analyzes *Eagan*, explaining the reasons why Maryland courts insist on retaining the parent-child immunity doctrine<sup>17</sup> and the case's impact on domestic abuse.<sup>18</sup> Part V concludes by suggesting that although the *Eagan* holding presents a fair and equitable alternative to abrogating the parent-child immunity doctrine,

---

6. See *Eagan v. Calhoun*, 347 Md. 72, 83-84, 698 A.2d 1097, 1103 (1997).

7. 347 Md. 72, 698 A.2d 1097 (1997).

8. See *id.* at 77-78, 698 A.2d at 1100.

9. For a development and discussion of this exception, see *infra* notes 97-105 and accompanying text.

10. See *Eagan*, 347 Md. at 88, 698 A.2d at 1105.

11. See *infra* notes 20-89 and accompanying text.

12. See *infra* notes 90-151 and accompanying text.

13. See *infra* notes 152-76 and accompanying text.

14. 347 Md. 72, 698 A.2d 1097 (1997).

15. See *infra* notes 177-257 and accompanying text.

16. See *infra* note 234 and accompanying text.

17. See *infra* notes 258-83 and accompanying text.

18. See *infra* notes 284-89 and accompanying text.

completely abrogating the doctrine may be more desirable than continuing to resolve cases under Maryland's common-law scheme of exceptions.<sup>19</sup>

## II. HISTORICAL DEVELOPMENT

### A. *The Emergence of the Parent-Child Immunity Doctrine*

At common law, children had distinct legal identities, were entitled to the benefits of their own property, and were permitted to bring actions for torts and other wrongs.<sup>20</sup> Common law also recognized that "parents possessed rights which were superior to the personal rights of their children, in order to enable the parents to perform their duties more effectually and to recompense them for their care and trouble in the discharge of those duties."<sup>21</sup> Early cases suggest that those parental rights that were deemed superior to the child's related to governing and disciplining children.<sup>22</sup>

Nonetheless, the early cases seemed to respect the right of a child to sue a parent in tort.<sup>23</sup> Although parents were allowed to discipline and control their children, they could still be liable "in extreme cases of cruelty and injustice, . . . malice or wicked motives[,] or an evil heart in punishing a child."<sup>24</sup> As long as parents disciplined in a reasonable and moderate manner, however, the state could not intervene in the parent-child relationship.<sup>25</sup>

In 1891, parent-child immunity first arose in a decision rendered by the Supreme Court of Mississippi.<sup>26</sup> In *Hewellette v. George*,<sup>27</sup>

---

19. See *infra* notes 290-93 and accompanying text.

20. See KEETON ET AL., *supra* note 1, § 122, at 904; RESTATEMENT (SECOND) OF TORTS § 895G cmt. b (1965).

21. *Mahnke v. Moore*, 197 Md. 61, 64, 77 A.2d 923, 924 (1951).

22. See Samuel Mark Pipino, *In Whose Best Interest? Exploring the Continuing Viability of the Parental Immunity Doctrine*, 53 OHIO ST. L.J. 1111, 1111-12 (1992) (discussing the "great trilogy" of early cases which establish the role of immunity in tort actions brought by children against their parents).

23. See *Dunlap v. Dunlap*, 150 A. 905, 907 (N.H. 1930) (suggesting that at English common law, a child might have had a cause of action for an assault committed by the father).

24. *Lander v. Seaver*, 32 Vt. 114, 122 (1859) (holding that there may be criminal liability when disciplinary measures go too far).

25. See Pipino, *supra* note 22, at 1120-21. Reasonably prudent parent standards allow courts to respect family autonomy while reserving the right to intervene when a parent's acts are unreasonable. See *id.*

26. *Hewellette v. George*, 9 So. 885 (Miss. 1891) *overruled by* *Glaskox v. Glaskox*, 614 So. 2d 906 (Miss. 1992).

27. 9 So. 885 (Miss. 1891) *overruled by* *Glaskox v. Glaskox*, 614 So. 2d 906 (Miss.

this court denied a minor recovery after the mother wrongfully committed her daughter to an insane asylum.<sup>28</sup> Without precedent or authority, the court stated that "so long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained."<sup>29</sup> The court espoused the public policy rationale that a child should be prevented from bringing this type of civil action in order to maintain familial harmony in society.<sup>30</sup> The court further reasoned that a minor child's appropriate means of redress and protection was through the state's criminal laws, not through civil actions.<sup>31</sup>

Many states adopted the parent-child immunity doctrine<sup>32</sup> under similar policy rationales, at times in rather disturbing and atrocious cases. For example, in *Roller v. Roller*,<sup>33</sup> the Supreme Court of Washington dismissed a daughter's civil suit against her father for rape, even after the father had been criminally convicted.<sup>34</sup> The court dismissed the suit, citing the public policy of preserving domestic tranquility.<sup>35</sup> In response to the argument that this policy justification was inapplicable because the family's harmony was irreparably destroyed,<sup>36</sup> the court retorted:

There seems to be some reason in this argument, but it overlooks the fact that courts, in determining their jurisdic-

---

1992).

28. *See id.* Although the decision did not elaborate on the facts, the daughter was a prostitute in Chicago and the mother brought her back home in order to reform her ways. *See* Sandra L. Haley, Comment, *The Parental Tort Immunity Doctrine: Is it a Defensible Defense?*, 30 U. RICH. L. REV. 575, 577-78 n.6 (1996). When the daughter refused to change, the mother committed her to an insane asylum for 10 days. *See id.*
29. *Hewellette*, 9 So. at 887. Although the daughter was married, she was living in the care of her mother at the time of the alleged injuries. *See id.* Therefore, the parent-child relationship had not been sufficiently severed to allow the suit. *See id.*
30. *See id.*
31. *See id.*
32. *See* Caroline E. Johnson, *A Cry For Help: An Argument For Abrogation of the Parent Child Tort Immunity Doctrine in Child Abuse and Incest Cases*, 21 FLA. ST. U.L. REV. 617, 624 (1993) (noting that 44 states at some time have adopted some form of the parent-child immunity).
33. 79 P. 788 (Wash. 1905).
34. *See id.* at 788-89.
35. *See id.*
36. *See id.*; *see also* Malcolm L. Jacobson, Note, *Right of a Minor Child Against a Parent Tortfeasor*, 12 MD. L. REV. 202, 205 (1957).

tion or want of jurisdiction, rely upon certain uniform principles of law, and, if it be once established that a child has a right to sue a parent for a tort, there is no practical line of demarkation [sic] which can be drawn, for the same principle which would allow the action . . . in this case, would allow an action to be brought for any other tort.<sup>37</sup>

The court's reasoning effectively elevated the theoretical basis of the doctrine over the practical absurdity of its application to the facts in the case, and in so doing, failed to provide adequate redress for children.<sup>38</sup> As the parent-child immunity doctrine developed in jurisdictions that mechanically applied its dictates, parents were insulated from civil liability for injuries to children that resulted from their failure to perform parental duties, excessive punishments that were not maliciously inflicted, and negligent disrepair of the home.<sup>39</sup> Any potential act or omission aligned with the parent-child relationship itself was effectively immunized.<sup>40</sup>

#### *B. States that Abrogated Parent-Child Immunity*

After *Hewellette v. George*,<sup>41</sup> states began to adopt the parent-child immunity doctrine without significant consideration of its potential ramifications.<sup>42</sup> However, "no sooner had American courts . . . embraced the parental immunity doctrine than they began to fashion a number of qualifications and exceptions to it."<sup>43</sup> The following is a

37. *Roller*, 79 P. at 788-89.

38. See Rhonda I. Framm, Note, *Parent-Child Tort Immunity: Time for Maryland to Abrogate an Anachronism*, 11 U. BALT. L. REV. 435, 439 (1982).

39. See *Mahnke v. Moore*, 197 Md. at 68, 77 A.2d at 926.

40. See *id.*

41. 9 So. 885 (Miss. 1891) *overruled by* *Glaskox v. Glaskox*, 614 So. 2d 906 (Miss. 1992).

42. See *Gibson v. Gibson*, 479 P.2d 648, 650 (Cal. 1971) ("Other states quickly adopted the rule of [*Hewellette*] and *Roller*, applying it to actions for negligence as well as for intentional torts, occasionally with more emotion than reason.") (citing *Mesite v. Kirchenstein*, 145 A. 753 (Conn. 1929); *Elias v. Collins*, 211 N.W. 88 (Mich. 1926); *Taubert v. Taubert* 114 N.W. 763 (Minn. 1908); *Small v. Morrison*, 118 S.E. 12 (N.C. 1923); *Sorrentino v. Sorrentino*, 162 N.E. 551 (N.Y. 1928); *Matarese v. Matarese*, 131 A. 198 (R.I. 1925); *Wick v. Wick*, 212 N.W. 787 (Wis. 1927)); see also *Johnson*, *supra* note 32 at 624.

43. *Gibson*, 479 P.2d at 650 (citing Robert A. Belzer, Comment, *Child v. Parent: Erosion of the Immunity Rule*, 19 HASTINGS L.J. 201 (1967)); see generally *Haley*, *supra* note 28, at 580-92 (discussing the exceptions to parent-child immunity); A. John Hoomani & Kimberly Sieredzki Woodell, *Liner v. Brown: Where Should We Go From Here—Two Different Approaches For North Carolina*, 19 CAMPBELL L. REV. 447, 454 nn.52-55 (1997) (noting that 14 states do not recognize or have com-

brief discussion of the rationale underlying several states' decisions to pull back the command of this doctrine.

### 1. A Qualified Abrogation of the Doctrine

In *Goller v. White*,<sup>44</sup> the Supreme Court of Wisconsin abrogated the parent-child immunity doctrine in negligence cases. In *Goller*, Daniel Goller brought suit against James White, his foster father, and White's insurer for injuries Goller sustained on a farm tractor.<sup>45</sup> The trial court held that because White stood *in loco parentis* to Goller, parent-child immunity protected him from any liability for negligence.<sup>46</sup> Although White had liability coverage for his workers, the policy excluded coverage to family members, thereby precluding Goller's recovery from the insurance company as well.<sup>47</sup> On appeal, the court partially abrogated the parent-child immunity doctrine and allowed Goller's suit to continue against his foster father.<sup>48</sup>

In abrogating the parent-child immunity doctrine in negligence cases, the *Goller* court carved out two scenarios in which the doctrine would continue to bar suits.<sup>49</sup> First, parent-child immunity would still apply when the alleged negligent act involved an exercise of ordinary parental authority over the child.<sup>50</sup> Second, the doctrine

---

pletely abrogated the child-parent immunity doctrine; 26 states have partially abrogated the doctrine; 10 states still recognize parent-child immunity in its original form).

44. 122 N.W.2d 193 (Wis. 1963) (abolishing parent-child immunity in negligence cases, with noted caveats). The *Restatement (Second) of Torts* has similarly abandoned the use of the parent-child immunity doctrine. Comment c of section 895G suggests that the reasons for retaining the doctrine do not outweigh the urgent need to compensate the injured person, particularly a child, for genuine harm that may affect his entire future. The pertinent section reads: "A parent or child is not immune from tort liability to the other solely by reason of that relationship." RESTATEMENT (SECOND) OF TORTS, *supra* note 20, § 895G.
45. See *Goller*, 122 N.W.2d at 193. While riding a tractor driven by his foster father, the child was injured when protruding bolts from a wheel caught his trouser leg. See *id.* Goller alleged that his foster father acted negligently by permitting him to ride on the tractor's drawbar, failing to warn him of the protruding bolts, and failing to seek immediate treatment after the accident. See *id.*
46. See *id.* at 196.
47. See *id.* at 194-95.
48. See *id.* at 198. Although refusing to afford White parental immunity, the concurrence concluded that White was not a parent *in loco parentis*. See *id.* (Brown, J., concurring). The concurrence reasoned that Goller's residence did not justify extending "to White the immunities possessed by a true parent." *Id.* (Brown, J., concurring).
49. See *id.*
50. See *id.*

continued to apply when the alleged negligent act involved an exercise of ordinary parental discretion with respect to the provision of food, clothing, household items, and health care.<sup>51</sup>

## 2. Completely Abrogating the Doctrine

In *Gibson v. Gibson*,<sup>52</sup> the Supreme Court of California completely abrogated the parent-child immunity doctrine.<sup>53</sup> The *Gibson* court agreed with the *Goller* court's opinion that "traditional concepts of negligence cannot be blindly applied" to the unique parent-child relationship.<sup>54</sup> Instead of following the *Goller* court's approach of carving out certain situations in which the immunity would continue to apply, however, the *Gibson* court abolished the parent-child immunity doctrine.<sup>55</sup>

The *Gibson* court recognized that tort concepts that control whether liability will attach necessarily differ when a child brings a suit against a parent.<sup>56</sup> For example, the court noted that a parent may exercise certain authority over a minor child, such as spanking, that would otherwise be tortious if directed towards someone else.<sup>57</sup> Instead of creating categories in which the parent-child immunity doctrine would still apply, however, the *Gibson* court fashioned a modified approach to assessing tort liability for parents—the "reasonable parent" standard.<sup>58</sup> The court held that "although a parent has the prerogative and the duty to exercise authority over his minor child, this prerogative must be exercised within reasonable limits."<sup>59</sup> The California court found the authority for "reasonable parental discipline" in an earlier California case—*Emery v. Emery*.<sup>60</sup> In *Emery*, the court commented:

---

51. *See id.*

52. 479 P.2d 648, 655 (Cal. 1971).

53. *See id.* at 650–54.

54. *See id.* at 652.

55. *See id.* at 652–53.

56. *See id.*

57. *See id.*

58. *See id.* at 655 (holding that the proper test for a parent's conduct is what an ordinary, reasonable, and prudent parent would have done in similar circumstances). The court chose this standard because it believed that the *Goller* decision would allow the parent "carte blanche to act negligently toward his child." *Id.* at 653.

59. *Id.*

60. 289 P.2d 218 (Cal. 1955) (holding that the parent-child immunity doctrine does not bar suits for willful and malicious torts). Notably, the *Emery* court also held that the plaintiff could sue her brother for negligence. *See id.*



Since the law imposes on the parent a duty to rear and discipline his child and confers the right to prescribe a course of reasonable conduct for its development, the parent has a wide discretion in the performance of his parental functions, but that discretion does not include the right willfully to inflict personal injuries beyond the limits of reasonable parental discipline.<sup>61</sup>

Although *Emory* specifically addressed "willful parental misconduct,"<sup>62</sup> the *Gibson* court found the same reasoning applicable to negligence.<sup>63</sup> Thus, the test used in *Gibson* is what an ordinary, reasonable, and prudent parent would have done under the circumstances.<sup>64</sup>

The *Gibson* court favored the "reasonable parent" approach over the approach taken by the *Goller* court for two reasons.<sup>65</sup> First, it predicted that the *Goller* court's categories in which the parent-child immunity doctrine would still apply could result in the "drawing of arbitrary distinctions about when particular parental conduct falls within or without the immunity guidelines."<sup>66</sup> Second, the court noted that under *Goller*, a parent may "act negligently with impunity" simply by "bringing himself within the 'safety' of parental immunity."<sup>67</sup> Thus, in California, a child is not barred from suing a

---

61. *Id.* at 224.

62. *Id.*

63. *See Gibson*, 479 P.2d at 653.

64. *See id.* *See generally* Haley, *supra* note 28, at 595 n.99 (citing *Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980); *Hartman v. Hartman*, 821 S.W.2d 852 (Mo. 1991)) (discussing other states that have adopted the "reasonably prudent parent" standard). However, the flexibility this test affords has also drawn much criticism. *See* Carla Maria Marcolin, Comment, *Rousey v. Rousey: The District of Columbia Joins the National Trend Towards Abolition of Parental Immunity*, 37 CATH. U. L. REV. 767, 787-88 (1988). According to one court, "considering the different economic, educational, cultural, ethnic and religious backgrounds which must prevail, there are so many combinations and permutations of parent-child relationships that may result that the search for a standard would necessarily be in vain—and properly so." *Holodook v. Spencer*, 324 N.E.2d 338, 346 (N.Y. 1974). In discussing a similar assessment by the Idaho Supreme Court, one commentator noted that courts generally use an objective reasonableness standard for all tort actions and that a court could account for such diversity by instructing a jury to consider various factors creating this diversity. *See* Marcolin, *supra*, at 788 (discussing *Pedigo v. Rowley*, 610 P.2d 560, 564 (Idaho 1980)). For a discussion of *Holodook*, see *infra* note 73.

65. *See Gibson*, 479 P.2d at 653.

66. *Id.*

67. *Id.*

parent, but the standards to impose tort liability on parents permits more leeway than if the conduct was directed towards an individual who was not the defendant's child.<sup>68</sup>

In *Gelbman v. Gelbman*<sup>69</sup>, the Court of Appeals of New York also abolished the parent-child immunity doctrine.<sup>70</sup> The *Gelbman* court reasoned that previous court decisions creating exceptions to the parent-child immunity doctrine failed to employ consistent logic to guide lower courts in deciding when to depart from the doctrine.<sup>71</sup> The court noted the "judicial erosion of the [parent-child] immunity doctrine" by courts of other states and recognized that the supposed goal of maintaining family harmony was no longer being served.<sup>72</sup> The court assumed the power to revoke the doctrine rather than waiting for the legislature to take action because the doctrine itself was a court-created rule.<sup>73</sup>

---

68. See *id.* at 652-54.

69. 245 N.E.2d 192 (1969); see also Martin J. Rooney & Colleen M. Rooney, *Parental Tort Immunity: Spare the Liability, Spoil the Parent*, 25 NEW ENG. L. REV. 1161, 1171-73 (1991) (discussing New York courts' handling of the parent-child immunity issue).

70. See *Gelbman*, 245 N.E.2d at 194.

71. See *id.* at 193 (noting that immunity is inapplicable in suits involving emancipated children, property damage, and intentional torts). "These exceptions neither permit reconciliation with the family immunity doctrine, nor provide a meaningful pattern of departure from the rule. Rather, they attest the primitive nature of the rule and require its repudiation." *Id.*

72. See *id.*

73. See *Holodook*. In *Holodook v. Spencer*, 324 N.E.2d 338 (1974), however, the Court of Appeals of New York stated that although it had effectively abrogated parent-child immunity, it would not recognize a child's action for negligent supervision. See *Holodook* at 342. Parents may be subject to forfeiture of custody and criminal sanctions for failure to supervise their children or provide minimum standards of care. See *id.* at 343. However, the court refused to recognize that negligent supervision was a tort that would subject the parent to civil liability. See *id.* If this type of claim were allowed, the court reasoned, "it would be the rare parent who could not conceivably be called to account in the courts for his conduct toward his child." *Id.* The court refused to construct a standard for a parent's supervision, opining that this is an aspect of the family within the discretion of the parent. See *id.* at 346 ("Supervision is uniquely a matter for the exercise of judgment. For this reason, parents have always had the right to determine how much independence, supervision and control a child should have, and best to judge the character and extent of development of their child."). Thus, it is fair to say that a small fragment of the parent-child immunity doctrine continues to linger in New York courts through this narrow holding. See *id.* at 343.

### 3. Abrogating the Doctrine in Motor Tort Cases

Other state court decisions further justify abrogating the parent-child immunity doctrine, lending support to California's criticism that the doctrine is "a legal anachronism."<sup>74</sup> One common area in which courts have abrogated the doctrine is in motor tort cases.<sup>75</sup> In *Sorensen v. Sorensen*,<sup>76</sup> the Supreme Judicial Court of Massachusetts chose to abrogate the parent-child immunity doctrine in motor tort cases in an effort to promote insurance recovery.<sup>77</sup> The court noted that the recent abrogations in other states showed a "distaste for a rule of law which in one sweep disqualif[ies] an entire class of injured minors."<sup>78</sup>

The Supreme Court of Pennsylvania espoused a similar rationale in *Falco v. Pados*,<sup>79</sup> when it abrogated the doctrine for motor tort cases. In *Falco*, the court opined that the greatest harm to the domestic tranquility of the family was not caused by the child's lawsuit against the parent, but by the damages from the injury itself.<sup>80</sup> At the time of the case, Pennsylvania law permitted children's actions against their parents that involved property rights or allegations of breach of contract.<sup>81</sup> The court noted, "[i]t seems absurd to say that it is legal and proper for an unemancipated child to bring an action against his parent concerning the child's property rights yet to be utterly without redress with reference to injury to his person."<sup>82</sup>

---

74. *Gibson v. Gibson*, 479 P.2d 648, 648 (Cal. 1971).

75. *See, e.g.*, *Ooms v. Ooms*, 316 A.2d 783, 785 (Conn. 1972) (abrogating the doctrine of parent-child immunity in actions for negligence in the operation of a motor vehicle); *Williams v. Williams*, 369 A.2d 669, 673 (Del. 1976) (allowing a child to sue their parent for automobile torts to the extent of the parent's automobile liability insurance coverage); *Krouse v. Krouse*, 489 So. 2d 106, 108-09 (Fla. 1986) (abrogating parent-child immunity in motor tort cases); *Glaskox v. Glaskox*, 614 So. 2d 906, 910 n.5 (Miss. 1992) (providing a comprehensive index of states that have abrogated or partially abrogated the parent-child immunity doctrine in motor tort cases).

76. 339 N.E.2d 907 (Mass. 1975).

77. *See id.* at 916.

78. *Id.* at 912 (quoting *Gibson*, 479 P.2d at 650) (internal quotation marks omitted); *see also* *Haley*, *supra* note 28, at 581 n.26 (discussing states that have abrogated the parent-child immunity doctrine in motor tort cases); *Johnson*, *supra* note 32, at 632 n.100 (stating that 29 states have refused to apply the parent-child immunity in cases involving motor torts).

79. 282 A.2d 351 (Pa. 1971).

80. *See id.* at 355.

81. *See id.*

82. *Id.* (quoting *Signs v. Signs*, 103 N.E.2d 743, 748 (Ohio 1952) (holding that a

The *Falco* court also rejected the argument that the parent-child immunity doctrine prevented collusive and fraudulent actions to be brought between parents and children.<sup>83</sup> The court explained that juries and trial courts were implemented for the purpose of preventing collusive claims.<sup>84</sup> Accordingly, the court held that immunity was unnecessary to accomplish this purpose and agreed to abrogate the doctrine in motor tort cases.<sup>85</sup>

Finally, in *Glaskox v. Glaskox*,<sup>86</sup> the Supreme Court of Mississippi, the same court that created the parent-child immunity doctrine in 1891, abrogated the doctrine in the area of motor tort cases.<sup>87</sup> In *Glaskox*, the court reasoned that there was no justification for barring children from the same rights to legal redress that others in society enjoy.<sup>88</sup> The court held that the "judicially created doctrine of parental immunity ha[d] outlived its purpose."<sup>89</sup>

### C. Maryland Adopts the Parent-Child Immunity Doctrine

Maryland first adopted the parent-child immunity doctrine in *Schneider v. Schneider*.<sup>90</sup> In *Schneider*, a daughter was driving a car, with her mother as a passenger, when the car was involved in an accident.<sup>91</sup> The mother sustained injuries from the accident and sued the child.<sup>92</sup> The court found that the doctrine articulated in *Hewel-*

---

parent is not immune from liability in a tort action brought by his unemancipated minor child who has been injured at his parent's business)) (internal quotation marks omitted).

83. *See id.*

84. *See id.*

85. *See id.* at 356. The court opined that it was more efficient to allow the courts to determine which claims are meritorious and which are frivolous. *See id.* Furthermore, the injustice of denying recovery purely on the basis of a family relationship outweighs the danger of fraud. *See id.* at 355 (citing *Tamashiro v. DeGama*, 450 P.2d 998, 1001-02 (Haw. 1969) (noting that the parent-child immunity doctrine cannot be asserted to avoid liability when a parent is injured because of the negligent operation of an automobile by a child)).

86. 614 So. 2d 906 (Miss. 1992).

87. *See id.* at 911.

88. *See id.*; *see also* *Kirchner v. Crystal*, 474 N.E.2d 275, 278 (Ohio 1984) (emphasizing that by abrogating the parent-child immunity doctrine, courts "provide the innocent victims of tortious conduct the forum they deserve in attempting to redress their claims").

89. *Glaskox*, 614 So. 2d at 912.

90. 160 Md. 18, 152 A. 498 (1930) (holding that the mother could not bring suit against her son for injuries sustained in an automobile accident, even though the son may have been negligent).

91. *See id.* at 18, 152 A. at 498.

92. *See id.*

lette—the seminal 1891 Mississippi case creating the parent-child immunity doctrine—should apply to prevent parents from suing their minor children.<sup>93</sup> The court reasoned that because the parent serves as guardian and protector of the child's interests, it would be inconsistent for the parent to attempt to recover a judgment against the child.<sup>94</sup> The court concluded that a parent could not simultaneously occupy the positions of both guardian of the minor and a plaintiff seeking to recover against that minor.<sup>95</sup>

*D. Exceptions to Maryland's Parent-Child Immunity Doctrine*

After *Schneider*, Maryland courts developed and refined the parent-child immunity doctrine in various situations. Maryland courts have not chosen to abrogate the doctrine entirely, despite persuasive authority to do so from sister states.<sup>96</sup> Instead, Maryland courts have created numerous exceptions to the doctrine. On four occasions, the Court of Appeals of Maryland has departed from the confines of the parent-child immunity doctrine.

First, the doctrine does not apply when a child suffers injuries that result from cruel and inhuman treatment or malicious and wanton wrongs.<sup>97</sup> In *Mahnke v. Moore*,<sup>98</sup> Russell Moore murdered his minor daughter's mother with a shotgun.<sup>99</sup> The murder took place in the mother's home and in the presence of their five-year-old daughter.<sup>100</sup> Moore then forced his daughter to remain in the house with the brutally mangled corpse for over a week.<sup>101</sup> Afterwards, Moore took his daughter to his home in New Jersey where he committed suicide in the child's presence by shooting himself with a shotgun, causing his brain matter and blood to fly onto the child's

---

93. *See id.* at 19, 152 A. at 499–500.

94. *See id.* at 22, 152 A. at 500. The court explained that it was the relation of the parties, as parent and child, that made it “inconvenient and improper that either should undertake to sue the other at common law.” *Id.* (quoting *McLane v. Curran*, 43 Am. Rep. 535 (1882)).

95. *See id.*

96. *See supra* notes 43–89 and accompanying text.

97. *See Mahnke v. Moore*, 197 Md. 61, 68, 77 A.2d 923, 926 (1951).

98. 197 Md. 61, 77 A.2d 923 (1951).

99. *See id.* at 63, 77 A.2d at 924. The mother and father were not married, but had lived as husband and wife for several years. *See id.*

100. *See id.*

101. *See id.* The five-year-old child witnessed the death of her mother, in which the shotgun wound blew away the right portion of the mother's head. *See id.* A portion of the skull landed on the kitchen table, and the mother's body collapsed over the back of the chair she had been sitting in and came to rest in a pool of blood. *See id.*

face and clothing.<sup>102</sup> As a result, the child suffered severe shock, mental anguish, and permanent nervous and physical injuries.<sup>103</sup> In a suit against Laura Moore, the father's widow and executrix, the court found that the father's actions amounted to malicious, deliberate acts that displayed a complete abandonment of the parental relationship.<sup>104</sup> The court ruled that, as a result of the father's acts, he had forfeited his right to invoke parent-child immunity.<sup>105</sup>

Second, the parent-child immunity doctrine does not apply when a child has reached the age of majority because both the parent and child are adults.<sup>106</sup> When the child reaches the age of majority, courts reason that there is no longer a concern that a civil action, brought by either the parent or the child, will disrupt the peace and harmony of the home.<sup>107</sup> In this situation, both the child and the parent are considered free and separate persons and the child is no longer subject to the control of or entitled to receive any services from the parent.<sup>108</sup>

The parent-child immunity doctrine continues to apply, however, when a child reaches the age of majority, but brings an action for wrongs a parent committed when the child was a minor.<sup>109</sup> For example, in *Renko v. McLean*,<sup>110</sup> an emancipated child sued her mother for injuries she sustained as a minor while riding in her mother's automobile.<sup>111</sup> The court reasoned that if it allowed this type of action, the parent-child immunity doctrine could be circumvented with ease.<sup>112</sup> The minor child could simply wait until she reached the age of majority before initiating a suit, thereby rendering parent-child immunity "an obstacle easily overcome with the passage of time."<sup>113</sup>

Third, the parent-child immunity doctrine does not bar a minor's tort action for negligence committed by the parent's busi-

---

102. *See id.*

103. *See id.*

104. *See id.* at 68-69, 77 A.2d at 926.

105. *See id.*

106. *See* *Waltzinger v. Birsner*, 212 Md. 107, 126, 128 A.2d 617, 627 (1957) (holding that a mother may sue her adult son for injuries sustained by the son's negligent operation of an automobile).

107. *See id.*

108. *See id.*

109. *See* *Renko v. McLean*, 346 Md. 464, 473, 697 A.2d 468, 472-73 (1997).

110. 346 Md. 464, 697 A.2d 468 (1997).

111. *See id.* at 467, 697 A.2d at 469.

112. *See id.* at 473, 697 A.2d at 472-73.

113. *Id.* at 473, 697 A.2d at 472.

ness.<sup>114</sup> The rationale is that neither parental authority nor family harmony are significantly impaired by a minor child bringing this type of case.<sup>115</sup> The policy underlying the parent-child immunity—maintaining familial harmony—is not as prevalent in the business context, particularly when liability insurance insulates the family relationship from the full economic impact of litigation.<sup>116</sup> In forming a business, the parent is deemed to have assumed the risk of exposure to tort liability from persons injured through the activities of the business.<sup>117</sup>

Finally, the parent-child immunity doctrine does not apply to stepparents. In *Warren v. Warren*,<sup>118</sup> the Court of Appeals of Maryland refused to extend immunity to stepparents, regardless whether or not they stood *in loco parentis*<sup>119</sup> to the injured child.<sup>120</sup> The court reasoned that parental duties and obligations were imposed upon natural parents as a part of nature itself, but that stepparents are under no legal obligation to shoulder these responsibilities.<sup>121</sup> Extending parent-child immunity to stepparents would afford them the benefits of being a natural parent without imposing any parental obligations on them.<sup>122</sup> Therefore, the *Warren* court held that the

---

114. See *Hatzincolas v. Protopapas*, 314 Md. 340, 342, 550 A.2d 947, 948 (1988) (holding that the parent-child immunity doctrine should not apply when an unemancipated child of a business partner sues another partner alleging negligence).

115. See *id.* at 358–59, 550 A.2d at 956. The court reasoned that the family obviously discussed the economic ramifications of such a suit and if the suit were unacceptable within the family unit, it would not have been brought at all. See *id.* at 358, 550 A.2d at 956. Furthermore, the fact that a parent's partnership may have liability insurance serves to encourage such a suit, rather than discourage it. See *id.*

116. See *id.* at 345, 550 A.2d at 949.

117. See *id.* at 358, 550 A.2d at 956.

118. 336 Md. 618, 650 A.2d 252 (1994).

119. "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities." BLACK'S LAW DICTIONARY, 787 (6th ed. 1990).

120. See *Warren*, 336 Md. at 628, 650 A.2d at 257.

121. See *id.* at 628–29, 650 A.2d at 257.

122. See *id.* at 629, 650 A.2d at 257. The court further explained that parent-child immunity is only available to natural parents because the obligations between natural parents and children are reciprocal, whereas stepparents are free to leave without any such obligations. See *id.* at 629–30, 650 A.2d at 257. The court ultimately saw no similarity between the stepparent-child relationship and the parent-child relationship mainly because neither the stepparent nor the child have any obligation or privilege to control the other. See *id.* at 630, 650 A.2d at 258.

civil suit between the two parties could stand.<sup>123</sup>

*E. The Current Status of the Parent-Child Immunity Doctrine in Maryland*

While Maryland courts are willing to acknowledge certain exceptions to the parent-child immunity doctrine, cases reveal that support for the doctrine has remained firm in other areas of the parent-child relationship. Specifically, in instances of motor tort cases, Maryland has refused to abrogate or qualify the doctrine.<sup>124</sup> In addition to promoting the traditional public policy rationales that support the doctrine,<sup>125</sup> the Court of Appeals of Maryland has expressed concern that permitting actions for motor torts would make the insurance carrier, rather than the parent, the ultimate defendant.<sup>126</sup> The fear is that these suits could create a situation in which a family would agree to bring a suit to collect compensation available under the insurance policy and not cooperate in the insurer's defense.<sup>127</sup> This could adversely affect society by causing the cost of liability insurance to rise.<sup>128</sup>

In *Montz v. Mendaloff*,<sup>129</sup> the court of special appeals declined to abrogate the parent-child immunity doctrine in a motor tort suit that involved negligent conduct by the parent.<sup>130</sup> In *Montz*, a child was traveling in a vehicle that her mother operated in a careless manner.<sup>131</sup> The car swerved off the road and struck an embank-

---

123. *See id.*

124. *See Renko v. McLean*, 346 Md. 464, 697 A.2d 468 (1997); *Warren v. Warren*, 336 Md. 618, 650 A.2d 252 (1994); *Frye v. Frye*, 305 Md. 542, 505 A.2d 826 (1985); *see also Smith v. Gross*, 319 Md. 138, 147, 571 A.2d 1219, 1223 (1990) (holding that the parent-child immunity doctrine applied even though the parent's relationship had not culminated in a marriage and the family did not reside in a common home); *Latz v. Latz*, 10 Md. App. 720, 723, 272 A.2d 435, 442 (1971) (holding that a minor, unemancipated child is not answerable to his parents for injuries he caused).

125. *See supra* notes 31-35 and accompanying text.

126. *See Frye*, 305 Md. at 566, 505 A.2d at 838. The court found that if such an exception were allowed, a parent's freedom from liability would ultimately be determined by the presence of insurance. *See id.*

127. *See id. But cf. Montz v. Mendaloff*, 40 Md. App. 220, 228-29, 388 A.2d 568, 573 (1978) (Gilbert, C.J., concurring) (stating that most parents enter into an automobile insurance agreement with the understanding that the policy will provide protection for their minor children).

128. *See Frye*, 305 Md. at 566, 505 A.2d at 838.

129. 40 Md. App. 220, 388 A.2d 568 (1978).

130. *See id.* at 225, 388 A.2d at 571.

131. *See id.*



ment, causing the child to sustain injuries.<sup>132</sup> The court held that the mother's conduct did not warrant invoking the exception to immunity established in *Mahnke*<sup>133</sup>—for malicious and wanton wrongs.<sup>134</sup>

The mother was taking her injured dog to the veterinarian and the dog's distress caused her to become distracted and lose sight of the road.<sup>135</sup> While her conduct may have been careless, the court found nothing in the record which would amount to a complete abandonment of the parental relationship.<sup>136</sup> Furthermore, the court reasoned that although they could foresee circumstances in which a parent's actions would amount to gross negligence, thereby demonstrating a complete abandonment of the parental relationship, the *Mahnke* exception should be construed narrowly.<sup>137</sup>

In cases before Maryland courts concerning parent-child immunity, parties often present similar policy arguments in favor of completely abrogating the doctrine.<sup>138</sup> For example, in *Frye v. Frye*,<sup>139</sup> the mother, as next friend, sued the father of her child when the child was injured while the father was driving his automobile.<sup>140</sup> In *Frye*, the mother urged the court to abrogate the parent-child immunity doctrine in the manner that it had previously abrogated interspousal immunity.<sup>141</sup> The court declined, noting that the abrogation of interspousal immunity did not automatically require a departure from parent-child immunity precedent.<sup>142</sup> The decision to abrogate interspousal immunity was premised upon society's changing views concerning the unity of legal identity that a husband and wife were previously presumed to share.<sup>143</sup> The same reasoning did not pro-

---

132. *See id.* The mother claimed that she had been distracted when the family dog became disruptive in the backseat. *See id.*

133. *See id.*; *see also supra* notes 97–105 and accompanying text. The court found that the accident was not caused by any deliberate action on the part of the mother. *See Montz*, 40 Md. App. at 225, 388 A.2d at 571.

134. *See supra* notes 97–105 and accompanying text.

135. *See Montz*, 40 Md. App. at 225, 388 A.2d at 571.

136. *See id.*

137. *See id.* at 223–24, 388 A.2d at 571.

138. *See, e.g., Frye v. Frye*, 305 Md. 542, 548, 505 A.2d 826, 829 (1986).

139. 305 Md. 542, 505 A.2d 826 (1986).

140. *See id.* at 544, 505 A.2d at 827.

141. *See id.* at 552–53, 505 A.2d at 831–32 (citing *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983) (abrogating the interspousal immunity rule as to negligence cases)).

142. *See id.* at 557, 505 A.2d at 834.

143. *See id.* at 559–61, 505 A.2d at 834–36.

vide support to abrogate the parent-child immunity doctrine.<sup>144</sup>

Although the parent-child immunity doctrine was created, enforced, and modified by the judiciary, the *Frye* court refused to abrogate the doctrine without direction from the General Assembly.<sup>145</sup> The court bolstered its reluctance to abrogate the doctrine by explaining the compelling public interests the doctrine serves—preserving, under normal circumstances, the internal harmony and integrity of the family unit and protecting parental discretion in the discipline and care of a child.<sup>146</sup> The parent-child immunity doctrine serves the legitimate purpose of “insulating families from the vagaries and rancorous effects of tort litigation.”<sup>147</sup> If the doctrine was completely abrogated, Maryland courts fear that they would be subjected to rebellious children and frustrated parents who would use the power of the court to mediate parent-child disputes and oversee parental decisions.<sup>148</sup>

Other reasons suggested for the doctrine “include the prevention of fraud and collusion among family members to the detriment

---

144. *See id.* at 557–58, 505 A.2d at 834. While a husband and wife are no longer considered to be one legal identity, a parent and child are still joined by the duties of nature and parenthood. *See id.* (citing *Waltzinger v. Birsner*, 212 Md. 107, 126, 128 A.2d 617, 627 (1957)).

145. *See id.* at 567, 505 A.2d at 839. The *Frye* court explained: “If we effect the exclusion by judicial action, ‘we discard our robes for legislative hats without the electoral accountability that legitimizes the legislative product or executive enforcement.’” *Id.* (quoting *Doe v. Duling*, 782 F.2d 1202, 1207 (4th Cir. 1986) (explaining the difference between the roles of the judiciary and of the legislature in our society)). The court noted that abrogating parent-child immunity in automobile torts would certainly have an impact on compulsory motor vehicle insurance. *See id.* Therefore, abrogating parent-child immunity in cases involving motor torts is a matter of public policy better addressed by the General Assembly. *See id.*; *see also Warren v. Warren*, 336 Md. 618, 626, 650 A.2d 252, 256 (1994) (declining to create a motor tort exception to parent-child immunity and reaffirming the decision in *Frye*).

146. *See Renko v. McLean*, 346 Md. 464, 468, 697 A.2d 468, 470 (1997) (holding that the parent-child immunity doctrine barred a child’s claim against her mother because the doctrine is essential to the maintenance of family discipline and stability).

147. *Id.* at 483, 697 A.2d at 478.

148. *See Warren*, 336 Md. at 626, 650 A.2d at 256. The *Warren* court further argued that parents will be forced to weigh the benefits of guiding and disciplining a child against the “looming specter of being hauled into court by an opportunistic attorney for the child.” *Id.* (quoting *Glaskox v. Glaskox*, 614 So.2d 906, 913 (Miss. 1992)); *see also Skinner v. Whitley*, 189 S.E.2d 230 (N.C. 1972) (suggesting that abrogation would lead to wrongful judicial discretion in the ordinary operation of the household).

of third parties, and the threat that intrafamilial litigation will deplete family resources."<sup>149</sup> In sum, the doctrine, as adopted and refined by Maryland courts, continues to act as a meaningful barrier for minors attempting to sue their parents based on acts that grow out of the parent-child relationship.<sup>150</sup> Despite the exceptions to the parent-child immunity doctrine, Maryland essentially retains the rule that there can be no liability for acts that occur while parents are carrying out their natural duties for their children.<sup>151</sup>

*F. The Interaction Between the Parent-Child Immunity Doctrine and Wrongful Death Statutes*

Maryland's wrongful death statute provides that a wrongful death action "may be maintained against a person whose wrongful act causes the death of another."<sup>152</sup> The statute states that an action shall be for the benefit of the wife, husband, parent or child of the deceased person.<sup>153</sup> Recovery under Maryland's wrongful death statute may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance or education.<sup>154</sup>

In Maryland, wrongful death actions are not completely derivative in nature and can be best analyzed through a two-pronged framework. First, a court must determine whether a "wrongful act" occurred, as defined by Maryland's wrongful death statute—the derivative prong.<sup>155</sup> Second, a court must determine whether the

---

149. *Renko*, 346 Md. at 468, 697 A.2d at 471; see also *Warren*, 336 Md. at 625, 650 A.2d at 255 (explaining that parent-child immunity preserves parental discipline and control, prevents fraud and collusion, and eliminates the threat that family resources will be depleted by litigation).

150. See *Yost v. Yost*, 172 Md. 128, 134, 190 A. 753, 756 (1937) (holding that there can be no parental liability for passive acts of negligence incident to the parental relationship). The *Yost* court prevented a child from bringing a suit against his father for failure to pay child support to the mother, distinguishing this as "passive negligence" rather than an "overt act of tort." *Id.*

151. See *id.*

152. MD. CODE ANN., CTS. & JUD. PROC. § 3-902(a) (1995).

153. See *id.* § 3-904(a); see also *Globe Am. Cas. Co. v. Chung*, 76 Md. App. 524, 535, 547 A.2d 654, 659 (1988) (explaining that unlike a survival action, a wrongful death action arises not from the injury to the decedent, but from his or her death).

154. See MD. CODE ANN., CTS. & JUD. PROC. § 3-904(d).

155. A wrongful act is defined as "an act, neglect, or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death had not ensued." *Id.* § 3-901(e).

claimant's wrongful death action is barred by any defense applicable to the claimant, regardless whether the defense is applicable to the decedent—the personal prong.<sup>156</sup>

Under the derivative prong, a wrongful act occurs when the tortfeasor's action or inaction would have entitled the decedent to recover damages against the tortfeasor if death had not ensued.<sup>157</sup> Accordingly, a surviving family member may not maintain a wrongful death action if the decedent would not have been able to recover against the tortfeasor had the decedent lived.<sup>158</sup> As illustrated in *Smith v. Gross*, parent-child immunity may be one of the defenses that would preclude the decedent from maintaining an action for damages against the tortfeasor had the decedent lived.<sup>159</sup>

In *Smith v. Gross*,<sup>160</sup> the Court of Appeals of Maryland denied recovery in a mother's action for the wrongful death of her child.<sup>161</sup> The child died in an automobile accident caused by his father's negligence.<sup>162</sup> As a surviving parent, Ms. Smith sued the child's father, claiming solatium damages<sup>163</sup> suffered as a result of the "tragic loss of her [only] son."<sup>164</sup> The court explained that under the derivative prong of Maryland's wrongful death statute, a wrongful death action can only be maintained if the decedent would have had a

---

156. See *Eagan v. Calhoun*, 347 Md. 72, 82, 698 A.2d 1097, 1102 (1997) ("[A wrongful death action] is a personal one to the claimant [and] the claimant is ordinarily subject to any defense that is applicable to him or her, whether or not it would have been applicable to the decedent.").

157. See *supra* note 155 and accompanying text.

158. See *Smith v. Gross*, 319 Md. 138, 144, 571 A.2d 1219, 1221–22 (1990) (denying a mother's wrongful death action against a negligent father because parent-child immunity would have barred the deceased child's claim against his father had the child survived the car accident); *Frazer v. Baltimore Gas & Elec. Co.*, 255 Md. 627, 632–34, 258 A.2d 425, 427–28 (1969) (holding that the decedent's contributory negligence barred plaintiff's recovery in a wrongful death action).

159. See *Smith*, 319 Md. at 149, 571 A.2d at 1224.

160. 319 Md. 138, 571 A.2d 1219 (1990).

161. See *id.* at 148, 571 A.2d at 1224.

162. See *id.* at 140–41, 571 A.2d at 1220.

163. See *Daley v. United States Auto Ass'n*, 312 Md. 550, 553 n.2, 541 A.2d 632, 633 n.2 (1988) (explaining that "solatium" damages are those damages allowable pursuant to section 3-904(d) of the *Maryland Code Annotated, Courts and Judicial Proceedings Article*). Solatium is defined as "[d]amages allowed for injury to the feelings." BLACK'S LAW DICTIONARY 1391 (6th ed. 1990).

164. *Smith*, 319 Md. at 141, 571 A.2d at 1220 (alteration in original) (internal quotation marks omitted).

cause of action against the tortfeasor had the decedent lived.<sup>165</sup> Under the circumstances in *Smith*, if the child had lived, he would not have been entitled to maintain an action against his father for negligence because parent-child immunity would have precluded the child's suit.<sup>166</sup> Thus, the court held that there was no wrongful act as defined by the wrongful death statute.<sup>167</sup> Accordingly, the mother's wrongful death action was barred.<sup>168</sup>

In its analysis, the court examined the wrongful death statute to determine whether the statute made an explicit exception to the parent-child immunity doctrine.<sup>169</sup> The court noted that parent-child immunity has been a part of Maryland's jurisprudence since it was adopted in 1930,<sup>170</sup> and refused to imply that the legislature intended to create an exception to the parent-child immunity doctrine for wrongful death actions.<sup>171</sup> The court reasoned that had the legislature intended for an exception, it would have expressly indicated that within the wrongful death statute.<sup>172</sup>

---

165. *See id.* at 144, 571 A.2d at 1221.

166. *See id.* at 148, 571 A.2d at 1224. Although the mother and father had not married or shared a common household, the court did not find this to be determinative in assessing whether a family relationship existed. *See id.* at 147, 571 A.2d at 1223. Mr. Gross was clearly the father of the child and there was no evidence to show that the father had forfeited the obligations and responsibilities of parenthood. *See id.*

167. *See id.* at 149, 571 A.2d at 1224.

168. *See id.* However, the dissent asserted that the father should not be afforded the immunity in a case when, because of the death of the child, there was no policy of family harmony to be served. *See id.* at 156, 571 A.2d at 1227 (Eldridge, J., dissenting). Judge Eldridge reasoned that because the death of the child severed the relationship, "[t]his suit cannot be contrary to public policy, for the simple reason that there is no home at all in which discipline and tranquillity are to be preserved." *Id.* at 154, 571 A.2d at 1226 (Eldridge, J., dissenting) (quoting *Mahnke v. Moore*, 197 Md. 61, 68, 77 A.2d 923, 926 (1951)).

169. *See id.* at 149, 571 A.2d at 1224.

170. *See Schneider v. Schneider*, 160 Md. 18, 23, 152 A. 498, 500 (1930) (holding that a mother was not entitled to maintain a suit in negligence against her son for injuries sustained in an automobile collision); *see also supra* notes 90-95 and accompanying text.

171. *See Smith*, 319 Md. at 149, 571 A.2d at 1224.

172. *See id.* Judge Eldridge, in his dissent, reveals that the wrongful death statute was actually a modification of the common law. *See id.* at 151, 571 A.2d at 1225 (Eldridge, J., dissenting). In 1852, the General Assembly derived the wrongful death statute from Lord Campbell's Act. *See id.* at 151-52, 571 A.2d at 1225 (Eldridge, J., dissenting). However, parent-child immunity was not recognized in Maryland until 1930, more than 75 years after the enactment of the wrongful death statute. *See id.* at 153, 571 A.2d at 1226 (Eldridge, J., dissenting). As a

*Smith* demonstrates how parent-child immunity can affect the derivative prong of Maryland's wrongful death statute.<sup>173</sup> Until *Eagan v. Calhoun*, however, Maryland courts had not addressed the effect that parent-child immunity could have on the personal prong of Maryland's wrongful death statute.<sup>174</sup> The precise question presented in *Eagan* was whether a child could maintain a wrongful death action against a parent for the death of the other parent, when the deceased parent *would have had* a viable claim against the surviving spouse if the deceased had lived.<sup>175</sup> The *Eagan* court was forced to squarely address whether a parent could invoke parent-child immunity when sued by a child for the wrongful death of the child's other parent.<sup>176</sup>

### III. THE INSTANT CASE

#### A. *Factual Background*

John and Gladys Calhoun were married on June 15, 1974, and had two children—Laura, born on October 4, 1980, and Kevin, born on July 23, 1982.<sup>177</sup> The couple had experienced marital difficulties, including an extramarital affair between Mr. Calhoun and a co-worker.<sup>178</sup> On the afternoon of May 13, 1992, the Calhouns were cleaning the gutters of their home and Mrs. Calhoun was standing on a ladder several feet above the ground.<sup>179</sup> During a heated argu-

---

result, when the General Assembly created the survival and wrongful death actions, the parent-child immunity could not be excluded because it did not exist. *See id.* at 156, 571 A.2d at 1227 (Eldridge, J., dissenting). Therefore, it seems illogical to say that if the legislature wanted to exclude the rule from the statute, it would have done so expressly.

173. *See id.* at 149, 571 A.2d at 1224.

174. In *Latz v. Latz*, 10 Md. App. 720, 272 A.2d 435 (1971), the Court of Special Appeals of Maryland barred a father's wrongful death action against his minor daughter for negligently causing the death of her mother in an automobile accident. *See id.* at 734, 272 A.2d at 443. However, it is not clear from the court's analysis which prong the court analyzed the case under. In either case, the result would be the same. Under the derivative prong, the mother, had she lived, would not have been able to maintain an action against her daughter because of parent-child immunity. Thus, the father's wrongful death action would be barred. Under the personal prong, the father's wrongful death action against his daughter would be barred because of parent-child immunity.

175. *See Calhoun v. Eagan*, 111 Md. App. 362, 383, 681 A.2d 609, 619 (1996).

176. *See infra* notes 216-38 and accompanying text.

177. *See Eagan*, 111 Md. App. at 367, 681 A.2d at 611.

178. *See id.*

179. *See id.*

ment, Mr. Calhoun kicked the ladder, causing Mrs. Calhoun to fall to the ground and sustain serious head injuries.<sup>180</sup> Mr. Calhoun did not attempt to administer CPR, call for medical assistance, or otherwise provide aid to his injured spouse.<sup>181</sup> Instead, he continued with other activities, keeping himself and the children away from the family home and the gravely injured Mrs. Calhoun.<sup>182</sup> Later that night, Mrs. Calhoun's nephew discovered her dead body.<sup>183</sup>

Mr. Calhoun was arrested and charged with second degree murder, voluntary manslaughter, and reckless endangerment.<sup>184</sup> Pursuant to a plea agreement, Mr. Calhoun pleaded guilty to voluntary manslaughter and was sentenced to five years imprisonment.<sup>185</sup> Subsequently, James Eagan, as guardian and next friend of both children, instituted a wrongful death action against Mr. Calhoun.

### B. *The Civil Trial for Wrongful Death*

At the close of his case, and after the close of all the evidence, Mr. Calhoun made a motion for judgment based on the parent-child immunity doctrine.<sup>186</sup> The trial court found that the case could fit within the *Mahnke* exception<sup>187</sup> and submitted three questions to the jury:

[1]With respect to Plaintiffs' claims that the Defendant, John C. Calhoun, committed a wrongful act or acts which caused the death of Gladys E. Calhoun, how do you find?[2] With respect to Plaintiffs' claims that the wrongful

---

180. *See id.* The detective testified at trial that the argument related to a caustic remark that Mrs. Calhoun had made which "challenged his [Mr. Calhoun's] manhood." *Id.* at 370, 681 A.2d at 612 (internal quotation marks omitted). Mr. Calhoun became angered by her comment and kicked the ladder. *See id.* The detective testified that Mrs. Calhoun's head injuries were "inconsistent with a fall from a ladder." *Id.* at 371, 681 A.2d at 613. In the detective's opinion, Mrs. Calhoun "lacked ancillary injuries that would be consistent with a fall from a ladder" and had two wounds on the top of her head, likely caused by a blow from a blunt object. *Id.* at 371-72, 681 A.2d at 613 (internal quotation marks omitted).

181. *See id.* at 367, 681 A.2d at 611.

182. *See id.* Mr. Calhoun washed, changed his clothes, went to the hardware store, picked his children up at school, met with a teacher, and went to his daughter's softball game. *See id.*

183. *See id.* at 368, 681 A.2d at 611-12.

184. *See id.* at 370, 681 A.2d at 612.

185. *See id.*

186. *See id.* at 373, 681 A.2d at 614.

187. *See id.* at 374, 681 A.2d at 615. For a discussion of the *Mahnke* exception, see *supra* notes 97-105 and accompanying text.

act or acts of the Defendant, John C. Calhoun, were atrocious, show a complete abandonment of the parental relation, were intentional, were willful and malicious, how do you find? [3] [If] it found for the plaintiffs on Question 1 or both Questions 1 or 2, what damages it found that the plaintiffs had suffered as a result of the wrongful act or acts of the Defendant.<sup>188</sup>

The jury found in favor of the children on the first question, but could not come to a verdict on the second.<sup>189</sup> The jury then awarded the children a total of \$2,360,000 in damages.<sup>190</sup> The trial judge declined to resubmit the second question and entered final judgment in favor of the children.<sup>191</sup>

*C. The Decision of the Court of Special Appeals of Maryland*

On appeal, the court of special appeals reviewed the continuing integrity of the parent-child immunity doctrine<sup>192</sup> and concluded: the "doctrine of parent-child immunity remains deeply embedded in the law of Maryland; it is up to the General Assembly to decide whether it is time to change the law."<sup>193</sup> The court then focused on the fact that although a wrongful death action has a derivative component, it is nonetheless a personal suit against the defendant to recover for the plaintiff's own injuries.<sup>194</sup> Therefore, any traditional defense that the defendant could assert against the plaintiff personally, including parent-child immunity, could be

188. *Eagan*, 111 Md. App. at 374, 681 A.2d at 614-15 (internal quotation marks omitted).

189. *See id.* at 375, 681 A.2d at 615.

190. *See id.* The damages consisted of the following:

\$70,000 to Laura and \$90,000 to Kevin for "pecuniary/economic damages" until their eighteenth birthdays; \$1,000,000 to each child for "mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, parental care, attention, advice, counsel, training or guidance"; and \$100,000 to each child for costs of education that they could reasonably expect would have been paid by their mother.

*Id.* at 375 n.4, 681 A.2d at 615 n.4.

191. *See id.* at 376, 681 A.2d at 615. Calhoun's counsel requested resubmission of the second question to the jury. *See id.* at 375, 681 A.2d at 615. Eagan objected, arguing that once the jury found that there was a wrongful act, the jury was allowed to move immediately to a determination of damages and they need not do more. *See id.*

192. *See id.* at 376-82, 681 A.2d at 616-19. (Eldridge, J. dissenting).

193. *Id.* at 382-83, 681 A.2d at 619.

194. *See id.* at 385, 681 A.2d at 620.



raised.<sup>195</sup>

In order for a child to prevail in spite of the parent-child immunity defense, there must either be an express exception to the parent-child immunity doctrine within the applicable wrongful death statute<sup>196</sup> or the circumstances must fit within one of the previously recognized exceptions.<sup>197</sup> While the children's guardian argued to the court that Calhoun's behavior squarely fit within the *Mahnke* exception,<sup>198</sup> Mr. Calhoun asserted that his behavior had not shown a "complete abandonment of the parental relation."<sup>199</sup> Furthermore, because he wished to reunite with his children, Mr. Calhoun argued that the suit against him would "unduly impair discipline and destroy the harmony of the family."<sup>200</sup> Mr. Calhoun reasoned that, in his case, applying the parent-child immunity doctrine would serve the policy purposes underlying immunity.<sup>201</sup>

The court, however, found that Mr. Calhoun's subjective intent to continue his parental relationship with his children was irrelevant in deciding whether to apply the parent-child immunity doctrine.<sup>202</sup> Rather, the issue was framed as whether Mr. Calhoun injured his children by a tortious act that constituted cruel and inhuman treat-

---

195. *See id.*

196. *See id.* at 386, 681 A.2d at 621. The court rejected the reasoning espoused by the dissent in *Smith v. Wade*, 461 U.S. 30, 34 n.2 (1983), that parent-child immunity did not exist when the wrongful death statute was first created. *See Eagan*, 111 Md. App. at 388, 681 A.2d at 621; *see also supra* note 172. Rather, the fact that the General Assembly has modified and revised the statute, without removing the parent-child immunity, was found indicative of the General Assembly's intent to include the immunity in the statute. *See Eagan*, 111 Md. App. at 389, 681 A.2d at 622.

197. *See supra* notes 97-123 and accompanying text.

198. *See Eagan*, 111 Md. App. at 374, 681 A.2d at 614; *see also supra* notes 97-105 and accompanying text.

199. *Eagan*, 111 Md. App. at 392, 681 A.2d at 623 (quoting *Mahnke v. Moore*, 197 Md. 61, 68, 77 A.2d 923, 926 (1951)). Calhoun argued that he had not abandoned the relationship because he cared for his children after his wife's death, made arrangements for their care and support, and wished to rejoin them after he was released from prison. *See id.* at 392-93, 681 A.2d at 623-24. However, the children's counselor testified at trial that Laura was fearful of her father, did not trust him, and did not wish to live with him after he was released from prison. *See id.* at 372, 681 A.2d at 613. Also, Kevin remained unable to talk about the loss of his mother. *See id.*

200. *Id.* at 392, 681 A.2d at 624 (quoting *Mahnke v. Moore*, 197 Md. 61, 68, 77 A.2d 923, 926 (1951)).

201. *See id.*

202. *See id.* at 396, 681 A.2d at 625.

ment or a wanton and malicious wrong.<sup>203</sup> The court found that the trial court had correctly denied Mr. Calhoun's motions for judgment based on the potential applicability of the *Mahnke* exception.<sup>204</sup> However, the court of special appeals found that the jury's inability to reach a verdict with respect to the second instruction—whether Mr. Calhoun's behavior was intentional and malicious—was of critical importance.<sup>205</sup> The court of special appeals determined that a mistrial should have been declared; the jury needed to determine whether Calhoun's conduct was "cruel and inhuman treatment or a malicious and wanton wrong within the meaning of *Mahnke*."<sup>206</sup> The court also found that it was reversible error for the trial court to rule, as a matter of law, that Calhoun's conduct was "cruel and inhuman" or "wanton and malicious" without a jury ruling on that precise question.<sup>207</sup> As a result, the court of special appeals reversed the lower court's decision and remanded the case for a new trial.<sup>208</sup>

#### *D. The Decision of the Court of Appeals of Maryland*

The Court of Appeals of Maryland granted certiorari, vacated the court of special appeals's decision, and remanded with instructions to affirm the judgment of the trial court.<sup>209</sup> The court found that a new trial would not be necessary because the jury had decided that Mr. Calhoun had committed a wrongful act and Mr. Calhoun admitted that the act was intentional.<sup>210</sup> Thus, by virtue of the jury's finding that Mr. Calhoun had committed a wrongful act, the evidence on review was sufficient, as a matter of law, to hold him liable for Mrs. Calhoun's death under Maryland's wrongful death

---

203. *See id.*

204. *See id.* at 398, 681 A.2d at 626; *see also supra* notes 97–105 and accompanying text.

205. *See Eagan*, 111 Md. App. at 399, 681 A.2d at 627. The jury's deadlock on a question does not mean that it rules in favor of one party or another. *See id.* Therefore, if it did not base its holding on the question of the father's acts, then it did not find that his actions did or did not fit within the *Mahnke* exception. *See id.*

206. *Id.* at 400, 681 A.2d at 627 (quoting *Mahnke v. Moore*, 197 Md. 61, 68, 77 A.2d 923, 926 (1951))(internal quotation marks omitted); *see also supra* notes 97–105 and accompanying text. The court declined to speculate on what it or the jury might have decided. *See Eagan*, 111 Md. App. at 400, 681 A.2d at 627. A remand was necessary in order to decide these essential factual issues. *See id.*

207. *Id.* at 366, 681 A.2d at 611.

208. *See id.*

209. *See Eagan v. Calhoun*, 347 Md. 72, 88, 698 A.2d 1097, 1105 (1997).

210. *See infra* text accompanying notes 225–33.

statute.<sup>211</sup> Furthermore, the court held that the *Mahnke* exception embraced voluntary manslaughter.<sup>212</sup>

First and foremost, the court declined to abrogate the parent-child immunity doctrine,<sup>213</sup> just as it had recently declined to do so in *Renko v. McLean*.<sup>214</sup> The court upheld the continuing validity of the doctrine and applied it to the personal prong of Maryland's wrongful death statute.<sup>215</sup> The court explained that the wrongful death action was personal to Kevin and Laura and would be subject to any defense or immunity that could be asserted against the children.<sup>216</sup> Therefore, Eagan, on behalf of the children, struggled to maintain the suit because parent-child immunity could be asserted as a bar against the children's wrongful death action.<sup>217</sup>

However, the court recognized that if the parent's behavior met the standard of wrongful behavior embodied in the *Mahnke* exception,<sup>218</sup> there would no longer be any justification for applying the parent-child immunity doctrine.<sup>219</sup> The court noted that when the death of a parent is occasioned by voluntary manslaughter, the parent-child relationship is shattered by the parent's willful acts and not by the ensuing lawsuit.<sup>220</sup> This criminal act shatters the family relationship in such a way that the policy considerations underlying parent-child immunity are no longer served and the need to protect

---

211. See *infra* text accompanying notes 234-35.

212. See *Eagan*, 347 Md. at 88, 698 A.2d at 1105.

213. See *id.* at 81, 698 A.2d at 1102 (citing *Renko v. McLean*, 346 Md. 464, 473, 697 A.2d 468, 472-73 (1997)).

214. 346 Md. 464, 473, 697 A.2d 468, 472-73 (1997).

215. See *Eagan*, 347 Md. at 81, 698 A.2d at 1102.

216. See *id.* at 82, 698 A.2d at 1102. The court rejected Eagan's argument that because Gladys would not have been barred from suing her husband for his intentional wrong, the children were not barred either. See *id.*

217. See *id.* at 83, 698 A.2d at 1102-03.

218. See *id.* at 83, 698 A.2d at 1103; see also *supra* notes 97-105 and accompanying text.

219. See *Eagan*, 347 Md. at 83-84, 698 A.2d at 1103. The court explained:

When the conduct giving rise to the action is of such a nature to have, itself, destroyed the family harmony and significantly eroded any realistic prospect of parental control and discretion, and there is no indication of fraud or collusion or the risk of depleting resources that otherwise would be devoted to the family unit, there is no longer any justification for the immunity and therefore no logical or public policy reason to apply it.

*Id.* at 83, 698 A.2d at 1103.

220. See *id.* at 83-84, 698 A.2d at 1103.

the family no longer exists.<sup>221</sup>

Following this rationale, the court determined, as a matter of law, that the immunity should not apply when a wrongful death action was predicated on an act amounting to voluntary manslaughter.<sup>222</sup> In addition, the court stated that the "application of the doctrine in such a case does not depend on the particular underlying circumstances, which, in their details, will likely vary from case to case."<sup>223</sup> The court explained that a finding of voluntary manslaughter would automatically constitute the cruel and inhuman treatment necessary to pierce the shield of immunity.<sup>224</sup>

The court of appeals did not view the fact that the jury had not answered the second jury question as fatal to the trial court's decision.<sup>225</sup> The jury did not need to determine whether Mr. Calhoun's acts were atrocious, showed a complete abandonment of the parental relation, or were intentional, willful, or malicious.<sup>226</sup> If the evidence demonstrated that Mr. Calhoun's acts were intentional, coupled with the jury's decision that the killing was a wrongful act, the "atrociousness of it and its effect as an abandonment of the parental relation . . . follow[ed] as a matter of law."<sup>227</sup> The court noted that the critical issue in finding Mr. Calhoun liable was whether the conduct causing his wife's death was intentional.<sup>228</sup>

The *Eagan* court held that the jury did not need to determine whether John Calhoun's killing of his wife was intentional because

---

221. *See id.* The court noted that no policy would be served by applying the immunity here, as the "underpinnings of the immunity doctrine no longer existed." *Id.* at 84, 698 A.2d at 1103. No family unit existed because the mother was dead and the father in jail. *See id.* The father had no parental discretion or control because the children were living with another family. *See id.* The children did not want to continue any personal relationship with their father and did not respond to their father's letters. *See id.* Furthermore, the family resources would not be depleted and no collusion existed. *See id.* Indeed, the father's resources had been depleted when he defended the criminal charges he faced. *See id.*

222. *See id.*

223. *Id.* at 84-85, 698 A.2d at 1103.

224. *See id.* at 84-85, 698 A.2d at 1103-04. The court reasoned that murder or voluntary manslaughter constituted "cruel and inhuman treatment, not just of the person killed but of the other family members as well." *Id.* at 85, 698 A.2d at 1104.

225. *See id.* at 88, 698 A.2d at 1105. For a complete recitation of the trial court's jury instruction, see *supra* note 188 and accompanying text.

226. *See id.* at 86, 698 A.2d at 1104.

227. *Id.*

228. *See id.*

of particular evidence that was elicited at trial.<sup>229</sup> In Calhoun's memorandum that he submitted in support of his motion for summary judgment, he made the costly mistake of attaching a memorandum from a collateral proceeding to demonstrate the close feelings he had towards his children.<sup>230</sup> The memorandum noted that Calhoun had entered a plea of guilty to voluntary manslaughter, and the *Eagan* court deemed this a judicial admission that his act was intentional.<sup>231</sup> In the memorandum, Mr. Calhoun further conceded that he was subject to the slayer's rule and could not share in any part of his wife's estate.<sup>232</sup> Calhoun was therefore estopped from asserting any position contrary to this admission.<sup>233</sup>

Ultimately, the court held that the *Mahnke* exception applied as a matter of law when one parent admits to intentionally killing the other.<sup>234</sup> The court vacated the court of special appeals's judgment and remanded the case with directions to affirm the judgment of the circuit court.<sup>235</sup>

Before rendering its holding, however, the court issued a caveat against extending the *Mahnke* exception to all wrongful death actions.<sup>236</sup> It noted that many tragic deaths are caused by negligence or non-willful behavior that does not generally destroy the family relationship.<sup>237</sup> In *Eagan*, however, the court explained that parent-child immunity was improper because the mother's death was due to voluntary manslaughter and not caused by simple negligence.<sup>238</sup>

---

229. *See id.*

230. *See id.* at 87, 698 A.2d at 1105.

231. *See id.* at 87, 698 A.2d at 1104-05.

232. *See id.* at 87, 698 A.2d at 1105. Calhoun submitted a memorandum of law during the proceeding concerning guardianship of his two children which stated, "the death of GLADYS ESTHER CALHOUN was *homicide*, homicide was *voluntary manslaughter*, Mr. Calhoun was the *criminal agent* . . . . He was convicted of *voluntary manslaughter* and incarcerated. The elements are prima facie within the ambit of the slayer's rule." *Id.*

233. *See id.* at 88, 698 A.2d at 1105. The court noted: [A] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his actions. *Id.* (citing 28 AM. JUR. 2D *Estoppel and Waiver* § 68, at 694-95 (1966)).

234. *See id.*

235. *See id.*

236. *See id.* at 83, 698 A.2d at 1103.

237. *See id.*

238. *See id.*

Additionally, the court observed that its holding paralleled the slayer's rule, which precludes persons guilty of murder or voluntary manslaughter from profiting from their own culpable conduct.<sup>239</sup> Specifically, the slayer's rule prevents one who commits a "felonious and intentional" homicide from claiming inheritances and insurance proceeds from the victim.<sup>240</sup> Many states have enacted legislation, or "slayer's statutes," that prevent killers from receiving any benefit from their victims' deaths.<sup>241</sup> These slayer's statutes are meant to effect the broad common-law policy that killers should not profit from their wrongdoing.<sup>242</sup> Although Maryland has not enacted a slayer's statute, the *Eagan* court recognized that the Court of Appeals of Maryland has formulated a common law slayer's rule in three decisions: *Price v. Hitaffer*,<sup>243</sup> *Chase v. Jenifer*,<sup>244</sup> and *Schifanelli v. Wallace*.<sup>245</sup>

In *Price*, an order of the orphan's court prevented a husband's estate from receiving any distribution from his deceased wife's estate.<sup>246</sup> The husband shot and killed his wife, and subsequently committed suicide.<sup>247</sup> The *Price* court held that neither the murderer

- 
239. See *Price v. Hitaffer*, 164 Md. 505, 518, 165 A. 470, 475 (1933) (holding that no man can profit from his own inequity or take advantage of his own wrong); *Chase v. Jenifer*, 219 Md. 564, 570, 150 A.2d 251, 255 (1959) (holding that the killing was both felonious and intentional, therefore, the killer could not recover as a beneficiary of the victim's insurance policy); *Schifanelli v. Wallace*, 271 Md. 177, 189, 315 A.2d 513, 519 (1974) (noting that a beneficiary's rights are not barred if they caused the death of the insured unintentionally or by gross negligence).
240. See *Ford v. Ford*, 307 Md. 105, 111, 512 A.2d 389, 392 (1986) (summarizing the law of the slayer's statute delineated in the earlier decisions of *Price*, *Chase*, and *Schifanelli*).
241. See *id.* at 125-27, 512 A.2d at 399-400 (providing a comprehensive index of states that have enacted slayer's statutes); see also *Lakatos v. Billotti*, 1998 WL 822108 (W. Va. Nov. 20, 1998) (holding that the slayer's statute precluded a murderer from taking property held in joint tenancy with the victim); *Estate of Greico v. Bankers Am. Life Assurance Co.*, 674 N.Y.S.2d 408, 409 (Slip Op. 06026) (finding that a husband who killed his wife could not collect as a beneficiary of her insurance policy, but was considered to have predeceased his wife, and ordering that the payments be made to her estate).
242. See *Price*, 164 Md. at 506, 165 A. at 470.
243. 164 Md. 505, 165 A. 470 (1933).
244. 219 Md. 564, 150 A.2d 251 (1959).
245. 271 Md. 177, 315 A.2d 513 (1974); see also *Eagan v. Calhoun*, 347 Md. 72, 85, 698 A.2d 1097, 1104 (1997) (citing *Price*, *Chase*, and *Schifanelli*).
246. See *Price*, 164 Md. at 506, 165 A. at 470.
247. See *id.* The issue before the court was whether a murderer, or his heirs or representatives, could be enriched by receiving any portion of his victim's estate.

nor his heirs or representatives could profit in any way from the victim's death.<sup>248</sup> Not only would this rule extend to bar any type of inheritance, but it would also prevent the slayer from collecting insurance proceeds from the victim's policy.<sup>249</sup>

Two decades after *Price*, the court of appeals held that the slayer's rule barred any type of recovery by the slayer when the killing was both felonious and intentional in *Chase v. Jenifer*.<sup>250</sup> The *Chase* court clarified that the slayer's rule prohibits a person from recovering any benefit or profit as a result of voluntary manslaughter because this type of killing is both felonious and intentional.<sup>251</sup> Finally, in *Schifanelli v. Wallace*,<sup>252</sup> the court narrowed the slayer's rule espoused in *Price* and *Chase* by holding that it would not apply when a person *unintentionally* caused the death of another.<sup>253</sup>

---

*See id.* As a case of first impression in Maryland, the court analyzed the two prevailing views concerning this issue. *See id.* One line of authority applied common-law principles of equity to prohibit an individual from profiting from his own wrongdoing or acquiring property by his own crime. *See id.* The opposing view was that a criminal conviction should not lead to forfeiture of an estate or an inheritance. *See id.* at 506-07, 165 A. at 470. Courts espousing the latter view declared that the distribution of estates should be governed by testamentary statutes, not by common law. *See id.*

248. *See id.* at 516-17, 165 A. at 474.

249. *See id.*

250. 219 Md. 564, 570, 150 A.2d 251, 255 (1959). In *Chase*, a husband named his wife as the beneficiary of his life insurance policy. *See id.* at 565, 150 A.2d at 252. His wife was subsequently convicted of voluntary manslaughter in his death, and was disqualified from recovering the proceeds. *See id.* Although the trial court did not designate whether the manslaughter was voluntary or involuntary, it decided, upon the facts, that the act was intentional. *See id.* at 568-69, 150 A.2d at 254.

251. *See id.* at 570, 150 A.2d at 255.

252. 271 Md. 177, 315 A.2d 513 (1974).

253. *See id.* at 188, 315 A.2d at 519. In *Schifanelli*, the husband accidentally shot and killed his wife while teaching her how to properly operate a gun. *See id.* at 181, 315 A.2d at 515. The trial court found that although the shooting was unintentional, the husband was guilty of gross negligence. *See id.* at 182, 315 A.2d at 516. However, the court held that the slayer's rule did not prevent the husband from collecting life insurance proceeds as a named beneficiary of his wife's policy. *See id.* at 188, 315 A.2d at 519. The court noted that, "the overwhelming weight of authority allows recovery where the beneficiary causes the death of the insured unintentionally or not feloniously." *Id.* The court explained that the slayer's rule had no application when the death was caused by accident, gross negligence, involuntary manslaughter, or carelessness. *See id.* at 188-89, 315 A.2d at 519; *see also* Ford v. Ford, 307 Md. 105, 123, 512 A.2d 389, 398 (1986) (holding that if the "slayer" is insane at the time of the killing, then the killing is not felonious in contemplation of the slayer's rule and

Despite the holding in *Schifanelli*, the slayer's rule is firmly imbedded in Maryland's jurisprudence; it effectively prevents killers from gaining any benefit from their victim's death, including money, property, or insurance proceeds.<sup>254</sup> In the instant case, the Court of Appeals of Maryland aligned the parent-child immunity doctrine with Maryland's slayer's rule. Both common law rules conform with the broad public policy that a person who commits a felonious and intentional killing should not benefit from that conduct whether through pecuniary gain or immunity from suit.<sup>255</sup> A killer could claim these proceeds, however, if the homicide was unintentional, despite the fact that such gross negligence would render the killer guilty of involuntary manslaughter.<sup>256</sup> Thus, the slayer's rule and the *Eagan* court's decision are in harmony; if a parent's death was predicated by murder or voluntary manslaughter, the offending parent cannot benefit from his criminal conduct by invoking parent-child immunity.<sup>257</sup>

#### IV. ANALYSIS

##### A. *Policy Reasons for Applying the Mahnke Exception as a Matter of Law*

Although many jurisdictions have abrogated the parent-child immunity doctrine, Maryland courts still find a reason to retain it. Parents should be allowed to discipline and control their children in a reasonable manner, without the constant fear of litigation brought by an unhappy child. The bulk of parent-child immunity litigation involves automobile torts in which the injuries were accidental and not willful acts.<sup>258</sup> In these cases, Maryland's courts have resoundingly refused to abrogate the immunity because they have not found a substantial basis for allowing such suits.<sup>259</sup>

However, Maryland courts have acknowledged circumstances when the supposed policies behind the doctrine would not be furthered by its application.<sup>260</sup> When the parent's wrongful acts are will-

---

the rule does not apply).

254. In addition, Maryland courts have construed the term "any benefit" to include the protection of parent-child immunity. *See supra* notes 246-51 and accompanying text.

255. *See Eagan v. Calhoun*, 347 Md. 72, 85, 698 A.2d 1097, 1104 (1997).

256. *See Ford*, 307 Md. at 112, 512 A.2d at 392.

257. *See Eagan*, 347 Md. at 85, 698 A.2d at 1104.

258. *See, e.g., Renko v. McLean*, 346 Md. 464, 697 A.2d 468 (1997); *Frye v. Frye*, 305 Md. 542, 505 A.2d 826 (1986).

259. *See supra* notes 124-37 and accompanying text.

260. *See supra* notes 96-123 and accompanying text.



ful, wanton, and intentional, the parent-child immunity doctrine does not allow parents to avoid tort liability simply because they are "the parent." The possibility of a child's lawsuit has little effect on the family when the peace and harmony has already been destroyed by the parent's acts. Fraudulent and collusive suits are unlikely, for the child may have no desire to associate with the parent to institute such a claim. Indeed, the child's inability to sue their parent might destroy familial harmony more than the possibility of litigation. A child should not be made to suffer injuries at the hands of their parents and subsequently be crippled further by a doctrine which silences their cries for justice. The instant case serves as a clear example of a situation in which the doctrine did not further any worthwhile policy and could not be applied without reaching absurd and unjust results.

The court of appeals has repeatedly refused to abrogate the parent-child immunity doctrine in its entirety.<sup>261</sup> Instead, it has chipped away at the doctrine by creating specific exceptions and construing those exceptions narrowly.<sup>262</sup> Although the doctrine was created at the hands of the judiciary, the courts have claimed that their hands are tied when it comes to abrogating the doctrine without explicit approval from the General Assembly.<sup>263</sup> The court of appeals has relied on *stare decisis* to justify its inaction,<sup>264</sup> stating that the power of the doctrine is evidenced by its lasting presence in our jurisprudence.<sup>265</sup> The courts have interpreted the legislature's inaction in this area as an intent of the General Assembly to retain the doctrine.<sup>266</sup> As a result, it is unlikely that the doctrine will be abrogated in the courtroom, ultimately shifting this burden to the legislature.

Maryland courts' passivity suggests a reluctance on their part to expand tort liability, especially between family members. Perhaps

---

261. *See supra* notes 138-51 and accompanying text.

262. *See supra* notes 124-37 and accompanying text.

263. *See supra* note 145 and accompanying text.

264. *See Montz v. Mendaloff*, 40 Md. App. 220, 227, 388 A.2d 568, 572 (1978). The court reasoned that the Maryland legislature had been aware of the doctrine since its creation by the courts in 1930, and had not taken action to change or remove it. *See id.* at 224, 388 A.2d at 570. Because of this inaction, the court reasoned that the doctrine had been "firmly embedded in the law of Maryland and [therefore] decline[d] to change it." *Id.* (citing *Sanford v. Sanford*, 15 Md. App. 390, 290 A.2d 812 (1972)).

265. *See id.*

266. *See id.*

the judiciary does not want the responsibility of promoting more litigation in an already overburdened judicial system. Additionally, the courts seem to regard the possibility of intra-familial litigation as flying in the face of a sacred institution—to expand the permissible categories would suggest a destruction of the family itself.<sup>267</sup> Regardless, the judiciary, as creator of the doctrine, retains the power to abrogate it when extreme circumstances call for relief.

Perhaps the judiciary has waited too long for a sign from the legislature, and should abrogate the doctrine altogether. The doctrine was adopted into Maryland jurisprudence by the courts,<sup>268</sup> who now claim that abrogation is not in their power.<sup>269</sup> The court can be both creator and abrogator, and should abrogate the doctrine with the clarifications espoused by the Supreme Court of California in *Gibson*—the reasonable parent standard.<sup>270</sup> Under a *Gibson*-styled approach, parents may reasonably discipline and control their children without having “carte blanche” to abuse or harm them.<sup>271</sup> Maryland could settle legitimate claims between parents and children without trammeling on the privacy of the household.

Although the *Eagan* court was unwilling to completely abrogate the doctrine, their holding in the instant case remains a just and rational conclusion.<sup>272</sup> The parent-child immunity doctrine should not apply when the parent has committed willful and felonious acts. First, no policy considerations are furthered by preventing a child’s wrongful death action predicated on voluntary manslaughter. Had the killer been a complete stranger, the law would have afforded the same child a means for recovery without hesitation. Nevertheless, when the defendant in such an action is the other parent, courts are wary to automatically allow recovery because it might disrupt family harmony.<sup>273</sup> The argument that any degree of family harmony could remain after a parent has committed such an atrocious act is misguided and irrational. No court or institution should allow a child to return to a parent whose willful and malicious acts constitute voluntary manslaughter against another family member. To further prevent a child from recovering civil damages under these circumstances would be yet another injustice in our judicial system.

---

267. See *supra* notes 145–49 and accompanying text.

268. See *supra* notes 90–95 and accompanying text.

269. See *supra* note 145 and accompanying text.

270. See *supra* notes 52–68 and accompanying text.

271. *Gibson v. Gibson*, 479 P.2d 648, 652–53 (Cal. 1971).

272. See *Eagan v. Calhoun*, 347 Md. 72, 81, 698 A.2d 1097, 1102 (1997).

273. See *id.* at 84, 698 A.2d at 1103.

The court of appeals's continued reluctance to construe the *Mahnke* exception more broadly did not impinge on its decision in the instant case.<sup>274</sup> While this decision did not create a new exception to the parent-child immunity doctrine per se, it implicitly expands the *Mahnke* exception.<sup>275</sup> The *Eagan* case allows a court to hold that a parent's acts are so egregious as to constitute a complete abandonment of the parental relationship when a parent admits to voluntary manslaughter during the civil suit.<sup>276</sup> When voluntary manslaughter forms the basis of the wrongful death action, this exception follows as a matter of law.<sup>277</sup>

Finally, the court expressly refused to expand the *Mahnke* exception<sup>278</sup> to every wrongful death action.<sup>279</sup> The court stated:

Tragic deaths often arise from acts of negligence or excessive, but non-willful, behavior on the part of family members—automobile accidents, carelessness in the home, for example—and, although such tragedies may well put a serious strain on some of the family relationships, they do not generally destroy a parent-child relationship.<sup>280</sup>

For this reason, the *Mahnke* exception specifically applies to those wrongful death actions that have destroyed the family unit to the point in which no public policy consideration would be served by applying the doctrine.<sup>281</sup> When the act amounts to voluntary manslaughter, it is sufficiently egregious to destroy the underpinning considerations of the doctrine.<sup>282</sup>

#### *B. The Impact of Eagan v. Calhoun on Domestic Abuse*

Domestic abuse is a growing and prevalent phenomenon in today's society.<sup>283</sup> Annually, at least two million children and from two

---

274. *See id.*

275. *See id.*

276. *See supra* notes 229–33 and accompanying text.

277. *See Eagan*, 347 Md. at 86, 698 A.2d at 1104.

278. *See id.* at 83, 698 A.2d at 1103; *see also supra* notes 97–105 and accompanying text.

279. *See Eagan*, 347 Md. at 83, 698 A.2d at 1103.

280. *Id.*

281. *See id.*

282. *See id.*

283. *See* THE MD ATTORNEY GEN.'S & LT. GOVERNOR'S FAMILY VIOLENCE COUNCIL, MARYLAND FAMILY VIOLENCE COUNCIL REPORT: STOP THE VIOLENCE: A CALL TO ACTION, RECOMMENDATIONS & ACTION PLAN, at 1 (Nov. 1996). The report lists domestic violence as one contributing factor to "the epidemic of family violence

to four million women are physically abused by the people closest to them.<sup>284</sup> Abuse by a husband or boyfriend "is the single largest cause of physical injury to women in America, more common than burglary, muggings, and other physical crime[s] combined."<sup>285</sup> Nearly thirty percent of all murdered women are killed by a current or former husband or boyfriend.<sup>286</sup> Maryland is not immune from these statistics. The Maryland State Police reported 24,021 spousal assaults in the calendar year of 1995.<sup>287</sup> The instant case reflects the type of behavior between spouses that results in death and subsequently shatters the entire family. The holding, in turn, reflects a growing awareness that criminal redress alone does not compensate the surviving family members for the loss of a parent. The holding in this case allows a child to maintain a wrongful death action against a parent who has abused the other parent to the point of death. Domestic abusers must now face both criminal and civil damages when their anger and hatred amount to atrocious and heinous crimes such as murder or voluntary manslaughter.

Nevertheless, the court of appeals seems to cling to the idea that parent-child immunity is the proper protection for responsible parents who discipline their children. Certainly this objective appears admirable when innocent parents are sued by their children for an act of simple negligence that may occur in the normal course of a family's relationship. However, immunity should not extend to those parents whose acts are inconsistent with that of a parent. Intentional and malicious acts against any person should not go without remedy merely because of a family relationship, especially when the *family* no longer exists.

The *Eagan* holding could create an avenue for a parent who wants to bring a wrongful death action for the death of a child at the hands of the other parent. Should one parent's willful acts amount to murder or voluntary manslaughter, *Eagan* may be construed to allow the other parent to bring an action for the wrongful death of the child. However, if the death of the child occurs due to negligence in an automobile tort, a parent's suit would fail, as it did

---

that has been spreading in households across the United States." *Id.*

284. *See id.*

285. *See id.*

286. *See id.*

287. *See id.* at 76. The report states that there was an 18% increase in spousal assaults from 1994, when the number of reported spousal assaults totaled 20,378. *See id.* at 1.

in *Smith v. Gross*,<sup>288</sup> because of the continuing vitality of the parent-child immunity doctrine in motor tort cases.<sup>289</sup> However, the holding in *Eagan* may allow a mother or father to bring a wrongful death action when the other parent abuses the child to the point of death.

## V. CONCLUSION

The holding in the instant case demonstrates that Maryland's highest court recognizes that there are instances in which parent-child immunity does not serve a worthwhile purpose. While the complete abrogation of the doctrine does not appear imminent, the instant case demonstrates a willingness to rectify those crimes that will escape punishment under it. Perhaps the intensity with which children are harmed by their parents will wake the court and force them to create new exceptions or abrogate the doctrine entirely. As Chief Judge Gilbert argued in *Montz v. Mendaloff*,<sup>290</sup> abrogating the immunity would "lift unemancipated minors from their current status of second class citizens, a position in which they have been thrust by the parental immunity doctrine, and recognize that unemancipated minors have the same rights as everyone else."<sup>291</sup> The arguments of stare decisis and legislative inaction do not bolster the vitality of the doctrine. Rather, these arguments reveal a weakness on the part of the judiciary in failing to support the rights of young people in Maryland by removing the universal bar of parent-child immunity.<sup>292</sup>

The parent-child immunity doctrine has outlived its usefulness in Maryland jurisprudence and should be abrogated with a "reasonable parent" standard as provided by the Supreme Court of California in *Gibson*. Until the court or the legislature removes the universal bar on such suits, the exceptions to the parent-child immunity are a fair and equitable alternative. While the *Eagan* court's holding does not take any steps toward completely abrogating the parent-child immunity, it subjects the parent to civil damages for wrongful

---

288. See *supra* notes 159-72 and accompanying text.

289. See *supra* notes 124-37 and accompanying text.

290. 40 Md. App. 220, 388 A.2d 568 (1978).

291. *Id.* at 228, 388 A.2d at 573.

292. Cf. *Montz v. Mendaloff*, 40 Md. App. 220, 228, 388 A.2d 568, 573 (1978) (Gilbert, C.J., concurring) ("To me there is no valid reason why the branch of government that gave birth to the doctrine cannot lay it to rest when, as here, there exists compulsory automobile liability insurance.").

intentional acts.<sup>293</sup> As a result, the rights of children are not subjugated by the confines of the immunity, but are expanded to allow for compensation for a parent's wrongful death.

*Dena M. Dietrich*

---

293. See *supra* notes 218–38 and accompanying text.