

n.6.¹

In Bebry, the plaintiffs were injured in a car accident caused by an adult driver who was intoxicated at the time of the accident and had a history of driving while intoxicated. The plaintiffs sued the driver and his parents, claiming that the parents were liable because they had signed their son out of an institution where he was receiving treatment for alcoholism and taken him into their home. After a default judgment was entered against the driver, summary judgment was granted in favor of the parents on the ground that they owed no duty to third persons to control their son's conduct, although they knew of his propensity to drive while intoxicated. The Court of Appeals affirmed, holding that the parents could not be held liable in the absence of evidence that they had assumed guardianship or some other form of legal custody of their son. Id. at 591-92.

In this case, there is no allegation of the type of custodial relationship Bebry requires in order to hold a parent legally responsible for failing to control the conduct of an adult child. In fact, it is undisputed that defendant did not have legal custody of his daughter at the pertinent time.

¹ The Bebry plaintiffs premised their argument for liability on Restatement (Second) of Torts § 319, which provides: "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." Because this case does not involve bodily injury, § 319 would not afford plaintiff a basis for liability. Nonetheless, the court's discussion is helpful in interpreting the common law rule that no liability can attach in the absence of a special relationship of custody or control.

Accordingly, under Bebry, defendant is entitled to summary judgment.

Plaintiff suggests that defendant's motion should be denied without prejudice to enable him to pursue further discovery. He contends that additional discovery may lead to evidence supporting a finding that defendant knew about, and could control, his daughter's offensive behavior. As Bebry makes clear, however, any such facts would be immaterial in the absence of a custodial relationship between defendant and his daughter. Since it is undisputed that no such relationship existed, further discovery is unwarranted.

Accordingly, defendant's motion for summary judgment on count four [Doc. # 29] is hereby granted.

So ordered.

Dated at Hartford, Connecticut this 28th day of November, 2005.

_____/s/_____
Robert N. Chatigny
United States District Judge