

102.32 NEGLIGENCE ISSUE - BREACH OF PARENT'S DUTY TO SUPERVISE
MINOR CHILDREN.¹

This issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant parent(s) in failing to control or supervise [*his*] [their] child?"

You are to answer this issue only if you have answered the (*state issue*) issue as to the child's negligence in favor of the plaintiff.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant parent(s) knew or, in the exercise of ordinary care, should have known that [*his*] [their] child [had engaged] [was engaging] in negligent conduct,²

Second, that the defendant parent(s) had an opportunity or ability to control or supervise [*his*] [their] child,³

Third, that, in the exercise of ordinary care under the same or similar circumstances, a reasonable parent would have exercised sufficient control or supervision over *his* child to stop or prevent the child's dangerous behavior,⁴ and

Fourth, that the defendant parent(s) failed to exercise sufficient control or supervision over [*his*] [their] child, which failure concurred with the negligence of [*his*] [their] child and was a proximate cause of the [injury] [damage] suffered by the plaintiff.⁵

Proximate cause is a real cause- a cause without which the claimed

[injury] [damage] would not have occurred, and one which a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant parent(s)' negligence concurred with the negligence of [his] [their] child and was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant parent(s).

1. *Moore v. Crumpton*, 306 N.C. 618, 295 S.E.2d 436 (1982); *Anderson v. Butler*, 284 N.C. 723, 202 S.E.2d 585 (1974); *Lane v. Chatham*, 251 N.C. 400, 111 S.E.2d 598 (1959); *McMillan v. Mahoney*, 99 N.C. App. 448, 393 S.E.2d 298 (1990); and *Patterson v. Weatherspoon*, 29 N.C. App. 711, 225 S.E.2d 634, *disc. rev. denied*, 290 N.C. 662, 228 S.E.2d 453 (1976). Where the parent encourages assists or participates in the child's negligent conduct, joint negligence may be involved. See N.C.P.I.-102.90 ("Negligence Issue-Joint Conduct-Multiple Tortfeasors").

2. *Moore, supra*, 306 N.C. at 624, 295 S.E.2d at 440; *Lane, supra*, 251 N.C. at 405, 111 S.E.2d at 603; *McMillan, supra*, 99 N.C. App. at 454-455, 393 S.E.2d at 302.

3. *Moore, supra*, 306 N.C. at 623, 295 S.E.2d at 440; *Anderson, supra*, 284 N.C. at 730, 202 S.E.2d at 589.

4. *Lane, supra*, 251 N.C. at 405, 111 S.E.2d at 603.

5. *Id.*, 251 N.C. at 402, 111 S.E.2d at 601; *McMillan, supra*, 99 N.C. App. at 455, 393 S.E.2d at 302-303.