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The Illinois parent-child tort immunity doctrine has traditionally prohibited or severely obstructed the rights of children seeking recovery for injuries suffered at the hands of their parents. A substantial number of other jurisdictions do not recognize parent-child immunity, finding the doctrine itself outdated, and its supporting

1. The doctrine of parent-child tort immunity does not allow a child to sue a parent or a parent to sue a child for personal injuries resulting from intentional torts or negligence. See W. Prosser, W. Keeton, The Law of Torts § 122 at 905 (5th ed. 1984). As the doctrine now exists in Illinois, however, either a parent or child may maintain an action for injuries resulting from intentional torts or willful and wanton misconduct. Nudd v. Matsoukas, 7 Ill. 2d 608, 131 N.E.2d 595 (1956). Recent Illinois appellate court decisions have also created a number of exceptions to the doctrine which allow parent-child negligence lawsuits in a variety of circumstances. See Stallman v. Youngquist, 129 Ill. App. 3d 859, 473 N.E.2d 400 (1984); See also Hartigan v. Berry, 128 Ill. App. 3d 195, 199, 470 N.E.2d 571, 573 (1984) (allows third party to bring action seeking contribution from parents alleging negligence of parents contributed to the child's injury); Moon v. Thompson, 127 Ill. App. 3d 657, 662, 469 N.E.2d 365, 367 (1984) (same); Cummings v. Jackson, 57 Ill. App. 3d 68, 72, 372 N.E.2d 1127, 1128 (1978) (allows child to maintain action against parent for negligence when duty violated is statutory rather than common law); Bussillo v. Hetzel, 58 Ill. App. 3d 685, 374 N.E.2d 1090, 1092 (1978) (allows child to maintain action against grandparent standing in loco parentis); Gulledge v. Gulledge, 51 Ill. App. 3d 972, 975, 367 N.E.2d 429, 431 (1977) (same); Johnson v. Meyers, 2 Ill. App. 3d 844, 846, 277 N.E.2d 778, 779 (1972) (allows child to maintain action against estate of deceased parent); Schenk v. Schenk, 100 Ill. App. 2d 198, 206, 241 N.E.2d 12, 15 (1968) (allows child to maintain action against parent when tortious conduct has no direct relationship to the family purpose).

2. The first two Illinois cases addressing the issue of parent-child tort immunity held that a child was absolutely barred from maintaining an action in tort against a parent. See Meece v. Holland Furnace Co., 269 Ill. App. 164, 169 (1933) ("[i]t is a rule of common law that a child cannot sue his father in tort unless a right of action is authorized by statute"); Foley v. Foley, 61 Ill. App. 577, 580 (1895) ("[i]t is doubtless the law that a child can not [sic] maintain an action for damages on account of maltreatment against a parent. . . .").


4. Twenty jurisdictions now recognize no form of parent-child tort immunity.
public policy arguments unpersuasive in light of social and jurisprudential developments since its inception. Illinois courts have persistently upheld parent-child tort immunity, although a number of exceptions and modifications of the doctrine have developed. The


5. See, e.g., Noctonick v. Noctonick, 227 Kan. 755, 766, 611 P.2d 135, 140 (1980) ("[w]e believe that the authorities which favor abrogation of the parental immunity doctrine state the proper approach in light of modern conditions and conceptions of public policy"); Dunlap v. Dunlap, 84 N.H. 352, 368, 150 A.2d 905, 909 (1959) ("[m]ere legal technicalities or remote possibilities of fact are not sufficient. Public policy is not or at least ought not to be enforced on any such basis"); Shearer v. Shearer, 15 Ohio St. 3d 94, 95, 480 N.E.2d 388, 391 (1985) ("[i]f the doctrine of parental immunity as posited were a good and useful rule of law, we could reasonably presume that the experience of the law would empirically establish the wisdom of that doctrine . . . [t]hat has not happened"); Kirchner v. Crystal, 15 Ohio St. 3d 326, 327, 474 N.E.2d 275, 277 (1984) ("[w]e find these rationalizations underlying the doctrine of parental immunity to be outdated, highly questionable and unpersuasive.").

6. The Supreme Court of Illinois has only specifically addressed the issue of parent-child tort immunity on two occasions. See Mroczynski v. McGrath, 34 III. 2d 451, 216 N.E.2d 137 (1966); Nudd v. Mataoukas, 7 Ill. 2d 608, 131 N.E.2d 525 (1956). On each occasion the Supreme Court of Illinois ruled that the doctrine of parent-child tort immunity did not apply in cases where the tortious conduct was willful and wanton. Mroczynski, 34 Ill. 2d at 455, 216 N.E.2d at 139; Nudd, 7 Ill. 2d at 619, 131 N.E.2d at 531. This exception to parent-child tort immunity opened the doors for Illinois appellate courts to recognize a myriad of other exceptions. See e.g., Statiman, 129 Ill. App. 3d at 863-65, 475 N.E.2d at 403-04, citing, Hartigan v. Beery, 128 Ill. App. 3d 185, 470 N.E.2d 571 (1984); Cummings v. Jackson, 57 Ill. App. 3d 68, 972 N.E.2d 1127 (1984); Busillo v. Hetzel, 58 Ill. 2d 682, 374 N.E.2d 1090 (1978);
Appellate Court of Illinois for the First District recently assessed the vitality of the parent-child tort immunity doctrine in *Stallman v. Youngquist*. Noting the doctrine’s sound and solid foundation, the court held that the doctrine remained a viable aspect of Illinois law. The court further held, however, that due to recent modifications and longstanding exceptions, the doctrine may not absolutely bar a child’s action against a parent.

On October 7, 1981, Bari Stallman, five months pregnant with Lindsay Stallman, drove her automobile along a highway in Illinois. While entering the driveway of a restaurant, the defendant-mother’s automobile collided with the automobile of the defendant, Clarence Youngquist. As a result of the collision the plaintiff was born prematurely with serious intestinal injuries.

An action was subsequently brought on behalf of the plaintiff-child seeking damages for internal injuries allegedly resulting from the collision. Count II of the complaint alleged that the defendant-mother was negligent in the operation of her automobile and that such negligence resulted in serious injury to the plaintiff. The circuit court dismissed the negligence count against the defendant-mother, finding that the parent-child tort immunity doctrine barred the plaintiff’s action.

Reversing the circuit court’s dismissal, the Appellate Court of Illinois for the First District addressed the issue of whether the parent-child tort immunity doctrine absolutely barred the plaintiff-child’s cause of action. While determining that the parent-child tort immunity doctrine remained an integral part of Illinois tort law, the court, nonetheless held that the doctrine does not bar re-
covery for injuries arising out of activities that are outside the family purpose or are unrelated to the family relationship. Applying these exceptions, the court held that the plaintiff-child was allowed to prove that the parental activity was outside the scope of the family purpose and remanded the case for further proceedings.

The court initially determined that Lindsay Stallman, although still a fetus at the time of her mother’s alleged negligence, was a legal person for the limited purpose of maintaining a negligence suit after her birth. After making this determination, the court briefly outlined the origin of the parent-child tort immunity doctrine in Illinois and found that precedent and public policy considerations provided the doctrine with a sufficient base in Illinois law.

Analyzing the present state of parent-child immunity, the court recognized the national trend in favor of abrogation of the doctrine and further conceded that the potency of parent-child immunity had weakened in Illinois. The Stallman court, however, relied upon an earlier decision and held that the parent-child tort immunity doctrine continued to bar a child’s recovery for injuries resulting from conduct directly connected to or in furtherance of the family purpose.

20. Id. at 863, 473 N.E.2d at 403.
21. Id. at 865, 473 N.E.2d at 404.
22. Id. at 862, 473 N.E.2d at 402. The Supreme Court of Illinois has determined that an infant has a right to be born free from negligently inflicted prenatal injuries. Renslow v. Mennonite Hospital, 67 Ill. 2d 348, 357, 367 N.E.2d 1250, 1255 (1977). The Supreme Court of Illinois has further rejected the requirement that a fetus be “viable” at the time of injury. The court allowed an infant’s claim seeking damages for a negligent preconception blood transfusion to the child’s mother which allegedly caused permanent injury to the infant. Id. at 349, 367 N.E.2d at 1253.

The scope of this casenote does not concern itself with the issue of prenatal injuries, or the duties of others to an unborn child. For an overview of Illinois law in this area see Renslow v. Mennonite Hospital, 67 Ill. 2d 348, 367 N.E.2d 1250 (1970). For a general overview of the law in this area see Annot., 91 A.L.R. 3D 316 (1979).

23. Stallman, 129 Ill. App. 3d at 862, 473 N.E.2d at 402. The court recognized that the doctrine was instituted in Illinois in the case of Foley v. Foley, 61 Ill. App. 577, 580 (1895) (“[i]t is doubtless the law, that a child can not [sic] maintain an action for damages on account of maltreatment against a parent . . . “). The Stallman court, however, does not explicitly recognize that the Foley decision, adopting parent-child tort immunity, is not supported by any prior caselaw. Compare Stallman, 129 Ill. App. 3d at 862, 473 N.E.2d at 402 with Foley, 61 Ill. App. at 580-83.
26. Id.
Because the action had been dismissed at the trial court level without an inquiry into the facts, the appellate court was without power to apply its holding to the facts. The Stallman court, therefore, remanded the case to allow the plaintiff-child an opportunity to prove that her mother's alleged negligent conduct was entirely unrelated to the objectives and purposes of the family. Absent such proof, the parent-child tort immunity doctrine would bar her action.

The decision of the Stallman court is deficient because it fails to recognize that the parent-child tort immunity doctrine serves no valuable purpose in modern society. Analysis of the doctrine's controversial history should have led the court to conclude that the doctrine's very existence in Illinois law is questionable. Parent-child tort immunity relies upon public policy arguments with little or no validity in present day society. Rather than conducting an analysis which recognizes the changing roles of families in 1981, the court instead chose to base its decision upon a string of prior Illinois decisions. Each of those decisions, regardless of their outcome, support the validity of the parent-child tort immunity doctrine. As a
result of the apparent "well settled" quality of precedent in this area, the Stallman court failed to question the doctrine's existence.

A brief history of the parent-child tort immunity doctrine demonstrates that the Stallman court's reliance upon Illinois precedent is misplaced. At common law, children were allowed to assert both contract and property actions against their parents. This right continues to exist in Illinois as well as other jurisdictions. While the decisions which first adopted parent-child tort immunity at the turn of this century claim strong common law precedent for their deci-


Illinois courts have allowed actions: where a third party action was brought against the parent for negligent supervision of the child, Hartigan v. Beery, 128 Ill. App. 3d 195, 470 N.E.2d 571 (1984); where a third party action was brought against the parent alleging that the parent's negligence contributed to the child's injuries, Moon v. Thompson, 127 Ill. App. 3d 657, 469 N.E.2d 365 (1984); Larson v. Buschkamp, 105 Ill. App. 3d 965, 435 N.E.2d 221 (1982); where a child brought a negligence action against a parent alleging violation of a statutory duty, Cummings v. Jackson, 57 Ill. App. 3d 68, 372 N.E.2d 1127 (1978); where a child brought an action to recover for injuries resulting from the negligence of a grandparent, Busillo v. Hetzel, 58 Ill. App. 3d 682, 374 N.E.2d 429 (1977); where a child brought an action against a deceased parent, Johnson v. Meyers, 2 Ill. App. 3d 884, 277 N.E.2d 778 (1972); and where a child brought an action against a parent where the alleged negligent conduct had no direct relationship with the family purpose, Schenk v. Schenk, 100 Ill. App. 2d 199, 241 N.E.2d 12 (1968).

36. The first case recognizing parent-child tort immunity was Hewelette v. George, 68 Miss. 703, 9 So. 885 (1891). That case involved an action by a child against her mother for false imprisonment. The daughter was married but separated from her husband. The mother had the daughter committed to an asylum. In addressing the issue as to whether the daughter should be allowed to maintain an action against her mother, yet without citing authority, the court reasoned:

The peace of society, and of the families composing society, and a sound public policy designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent. The State, through its criminal laws, will give the minor child protection from parental violence and wrongdoing, and this is all the child can be heard to demand. *Id.* at 711, 9 So. at 887.

During the development of the doctrine, however, many courts ignored or disregarded parent-child tort immunity. See, e.g., Treschman v. Treschman, 61 N.E. 961 (Ind. App. 1901) (allowing child to maintain suit against mother for battery); Dunlap v. Dunlap, 84 N.H. 352, 150 A. 905 (1930) (allowing child to maintain action against parent for negligence). See also McCurdy, *Torts Between Persons in Domestic Relation*, 43 Harv. L. Rev. 1030, 1079-80 (1930).


sions, the weight of nineteenth century authority actually indicates a willingness to allow children to bring actions against their parents for both negligent and intentional torts.

In 1895, despite this contrary authority, the Appellate Court of Illinois for the Second District, citing no authority, adopted the parent-child tort immunity doctrine. The rationale supporting Illinois'
adoption of parent-child immunity was an apparent public policy favoring the rights of parents to maintain authority within the family.43 Other jurisdictions compared the parent-child relationship to that of husband and wife, noting the long standing common law immunity between husbands and wives.44 On the other hand, some courts resisted or ignored the development of parent-child tort immunity45 which had come to produce some rather harsh results.46 The doctrine continued to gain support, however, and eventually was adopted in all but eight jurisdictions.47

Throughout its development, other jurisdictions have adopted numerous justifications for the doctrine.47 Illinois, however, has con-

43. See Roller v. Roller, 37 Wash. 242, 245, 79 P. 788, 789 (1905); McKelvey v. McKelvey, 111 Tenn. 388, 391, 77 S.W. 664, 665 (1903). This view, however, has been harshly criticized. The legal relationship between husband and wife has never existed between parents and children. At common law their existed a legal unity between husband and wife. The legal existence of the wife was absorbed into the husband. The unity does not exist in the relationship between children and their parents. Dunlap v. Dunlap, 84 N.H. 352, 353-54, 150 A. 905, 906 (1930). See also Hollister, Parent-Child Immunity: A Doctrine in Search of Justification, 50 FORDHAM L. REV. 489, 496 (1982); McCurdy, Torts Between Persons in Domestic Relation, 43 HARV. L. REV. 1030, 1057 (1930).
44. Resisting the parent-child tort immunity doctrine, the Supreme Court of New Hampshire, in Dunlap v. Dunlap, 84 N.H. 352, 354, 150 A. 905, 906-08 (1930) stated:
There has never been a common-law rule that a child could not sue its parent.
It is a misapprehension of the situation to start with that idea, and treat the suits which have been allowed as exceptions to a general rule. The minor has the same right to redress for wrongs as any other individual.
Id.
Dunlap allowed a child's action against his father for injuries sustained as a result of the father's negligence while working with the father's construction company. See also Clasen v. Pruhs, 69 Neb. 278, 292-94, 95 N.W. 640, 641 (1903) (without mention of parent-child immunity allowed a child's action against guardian for negligently causing the child to leave the family home without sufficient clothing causing the child to become frostbitten).
45. Dunlap v. Dunlap, 84 N.H. 352, 363-64, 150 A. 905, 909 (1930). See, e.g., Roller v. Roller, 37 Wash. 242, 247, 79 P. 788, 789 (1905). The court disallowed child's action for damages resulting from the father's rape fo the child. Id. The court's rationale was that to allow children to sue their parents would disrupt family harmony. Id.
46. Hollister, Parent-Child Immunity: A Doctrine in Search of Justification, 50 FORDHAM L. REV. 489, 494 n.39 (1982), noting that parent-child tort immunity was never adopted in Alaska, Hawaii, Kansas, North Dakota, South Dakota, Utah or Vermont; further noting that Montana has recognized husband-wife immunity, but has never specifically recognized parent-child tort immunity.
A recent decision of the Supreme Court of Idaho indicated that Idaho has never adopted intrafamily immunities. See Farmers Insurance Group v. Reed, No. 14421 (Idaho, June 17, 1985) (available September 5, 1985 on WESTLAW, States Library) ("[c]ontrary to a widespread assumption, the general doctrine of intrafamily immunity has never been incorporated into Idaho common law")
47. The following general policy considerations have been adopted to support the validity of parent-child tort immunity:
1. Preservation of family harmony and domestice tranquility.
2. Preservation of parental authority.
sistent relied upon public policy promoting harmony and tranquility within the family as its support for the doctrine’s continued validity. The rationale for this argument is that the prevention of intrafamily litigation will protect and support family harmony.

The Illinois Supreme Court has, in dicta, questioned the propriety of the parent-child tort immunity doctrine on several occasions, but to date has never specifically decided whether a parent is liable for injuries inflicted upon a child absent willful and wanton conduct. At the time the supreme court first addressed the issue of parent-child tort immunity it held that neither stare decisis nor public policy supporting family harmony were sufficient to bar a child’s recovery for injuries resulting from the willful and wanton misconduct of a parent. Despite the Illinois Supreme Court’s indi-

3. The injured child’s right to institute criminal proceedings or seek removal from the parents’ custody.
4. Preservation of family financial security.
5. The analogy between the relationship between husbands and wives to that of parents and children.
6. The reluctance to allow parental inheritance of the child’s recovery.
7. The court’s fear of frivolous claims.
8. The danger of fraud or collusion between family members.


50. See Mroczynski v. McGrath, 34 Ill. 2d 451, 455, 216 N.E.2d 137, 139 (1966) (“[w]hile there might be sufficient justification to prevent suits for mere negligence . . .” [emphasis added]; Nudd v. Matsoukas, 7 Ill. 2d 608, 619, 131 N.E.2d 525, 531 (1956) (“any justification for the role of parental immunity can be found only in a reluctance to create litigation and strife between members of the family unit” [emphasis added]).


52. Nudd v. Matsoukas, 7 Ill. 2d 608, 131 N.E.2d 525 (1956).

53. Id. at 617-19, 131 N.E.2d at 530-31. In Nudd, the plaintiff-child alleged in the complaint that the defendant-father “willfully recklessly and wantonly drove his vehicle at an excessive rate of speed on a foggy night, when travelling was difficult because of the wet pavement . . . “ Id. at 610, 131 N.E.2d at 526. The Supreme Court of Illinois reversed the dismissal of the trial court, holding that the parent-child tort immunity doctrine did not bar an action for injuries caused by willful and wanton misconduct. Id. at 619, 131 N.E.2d at 531.
cation that parent-child immunity is not "well settled" in Illinois, and despite that Court's indications that this area of the law warrants review, the Stallman court neglected to undertake any such review.

The Stallman court cited as authority no less than fourteen Illinois appellate court decisions, each of which fails to examine the doctrine's present validity. Instead, these decisions relied on both the policy argument that the doctrine promotes family harmony and earlier precedent that has gone unexamined since Illinois first adopted parent-child tort immunity. Paradoxically, however, the Stallman court plainly admits that the doctrine is court-created and that the courts are free to alter any doctrine which they create. If the Stallman court had reviewed the questionable rationale supporting the existence of Illinois' parent-child tort immunity doctrine, rather than hide behind the skirts of stare decisis, it would have significantly altered the doctrine.

One method to alter the doctrine is to abolish it. Analysis of the policy argument upon which the Stallman court relies demonstrates severe weaknesses. Promotion of family harmony and domestic tranquility is a worthy yet idealistic goal for the courts to pursue. Relying on this policy to support the parent-child immunity doctrine, the Stallman court must have assumed that lawsuits between parents and their children would significantly upset family harmony.

54. See supra notes 50-53 and accompanying text.
This assumption is unsubstantiated and speculative because any disruption within the family is more likely to occur because of the child's injury rather than the resulting lawsuit. Furthermore, liability insurance is so prevalent in modern society that a negligence suit between parent and child is generally a controversy between the child and the parent's liability insurance carrier. Under most circumstances, a child's action against a parent will not ensue unless the parent has purchased liability insurance.

Opponents of this argument assert that allowing intrafamily litigation promotes fraud and collusion among family members. While this argument presents a facially valid concern against which the courts must guard, the possibility of fraud and collusion is a danger existing with any lawsuit involving insurance proceeds.

60. See Nocktonick v. Nocktonick, 227 Kan. 758, 770, 611 P.2d 135, 141 (1980), where the court stated:

It should be noted that the states [that have abrogated the doctrine] have followed for many years the rule which we have adopted today, yet there apparently has been no significant disruption in family relationships as grimly predicted by the prophets of doom who insist on the application of parental immunity . . .

Id.

61. Farmers Ins. Group v. Reed, No. 14421 (Idaho June 17, 1985) (available September 5, 1985, on WESTLAW, States library) ("[d]isruption of domestic tranquility is much less likely where the minor child can be compensated for his losses . . ."); Kirchner v. Crystal, 15 Ohio St. 3d 326, 328, 474 N.E.2d 275, 277 (1984) ("domestic tranquility in our opinion will be promoted by our abrogation of this artificial bar to recovery . . ."); Lee v. Comer, 159 W.Va. 585, 587, 224 S.E.2d 721, 722 (1976) ("to hold that a child's pains must be endured for the peace and welfare of the family is something of a mockery").

62. Gibson v. Gibson, 3 Cal. 3d 914, 920-21, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 293 (1971) ("we felt that we cannot overlook its practical effect on intrafamily suits"); Goller v. White, 20 Wis. 2d 402, 412, 122 N.W.2d 193, 197 (1963) ("we consider the wide prevalence of liability insurance in personal injury actions a proper element to be considered in making the policy decision of whether to abrogate parental immunity . . ."). See also Worrell v. Worrel, 174 Va. 11, 21, 4 S.E.2d 343, 347 (1939) ("a different situation arises where the parent is protected by insurance . . . [t]his action is not unfriendly as between the daughter and the father . . . their interests unite in favor of her recovery . . .").


[T]he possibility of collusion exists to a certain extent in any case. Every day
spite these possibilities, Illinois law does not prohibit lawsuits between friends, cousins, aunts or uncles. On the contrary, the Stallman court itself recognized that an exception to the parent-child tort immunity doctrine allows a child to bring a tort action against a grandparent. The possibility of fraud and collusion should not be disregarded; rather, it should be recognized that extensive procedural rights, such as summary judgment proceedings, discovery, and the right to cross-examine adverse witnesses at trial, have been established to guard effectively against that danger in a variety of circumstances.

Additionally, several of the exceptions to the parent-child tort immunity doctrine cited in Stallman render the courts reliance on the family harmony rationale unconvincing. First, as noted above, Stallman recognized the exception to Illinois parent-child tort immunity allowing a child to bring an action against a grandparent for injuries resulting from that grandparent's negligence. This exception is inconsistent with Stallman's purpose of promoting family harmony. If a lawsuit between parent and child is disruptive of the family harmony, then so too is a lawsuit between grandparent and child. In a society where it is not uncommon for both parents to work, and in equally as common for a child to live with only one

we depend on juries and trial judges to sift evidence in order to determine the facts and arrive at proper verdicts. Experience has shown that the courts are quite adequate for this task. In litigation between parent and child, judges and juries would naturally be mindful of the relationship, and would be even more on the alert for improper conduct.


66. The author's research locates no authority in Illinois prohibiting lawsuits between friends or relatives. The Illinois Guest Statute ILL. ANN. STAT. ch. 95 1/2 § 10-201 (Smith-Hurd 1985), however, provides that no person riding as a guest in a motor vehicle shall have a cause of action against the driver of a motor vehicle unless the accident causing injuries has been caused by the willful and wanton misconduct of the driver. Id.


68. Dismissing the possibility of fraud and collusion as insufficient to uphold parent-child tort immunity, the Supreme Court of Ohio, in Kirchner v. Crystal, 15 Ohio St. 3d 326, 329, 474 N.E.2d 275, 278 (1984), noted:

Unfortunately, fraud and collusion are always a possibility in any legal action that is pursued. In these types of situations we depend on our judicial framework to ferret out the fictitious claims from the real ones. Our system is well equipped with sufficient safeguards which are designed to thwart the opportunity for fraud and collusion. The deterrent effect of a perjury charge, extensive and detailed pretrial discovery procedures, the opportunity for cross examination, and the availability for summary judgment motions, are but a few examples of the tools available to our judicial system in exposing fraudulent claims in any type of lawsuit.

Id.

parent, frequently the child's grandparents are in loco parentis. In many cases the grandparents may also share with the parents both moral and financial duties attendant to raising a child. Thus, to allow a child to bring an action against a grandparent has equal potential to disrupt family harmony.

The *Stallman* court cites with approval another exception to parent-child tort immunity: the right of third parties to seek contribution from the parents of an injured child. The court recognized that Illinois allows a third party to interplead a child's parents as third party defendants and allege that the negligence of the parent or parents contributed to the child's injuries. The contribution action is also available in Illinois when the third party alleges that the parents were negligent in their supervision of the child. Such actions clearly contradict the purpose of the doctrine itself. When a contribution action exists, the child's original lawsuit eventually results in the action against the parent. Under these circumstances, a child is allowed to recover for injuries resulting from the negligence of both the third party and the parents. Yet when no such third party action exists the negligent parent is allowed to escape liability.

A majority of jurisdictions that once recognized parent-child tort immunity now recognize that the doctrine creates many incurable inconsistencies. Finding its supporting policy arguments unpersuasive and its precedent obsolete, these jurisdictions have abrogated the doctrine. These courts have instead decided that the plaintiff-child's right to recover for tortiously inflicted injuries overrides the archaic policy arguments supporting a bar to such recovery. Extensively examining the common law background of the doctrine, the courts that have abrogated parent-child tort immunity have found no legitimate basis for the doctrine's initial creation.

The *Stallman* court was afforded the opportunity to review the present validity of the parent-child tort immunity doctrine. Unfor-

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73. See supra notes 4 & 5, and accompanying text.

74. See supra notes 4 & 5, and accompanying text.

75. See supra notes 60-62.

76. See supra notes 5 & 36-40, and accompanying text.
tunately, the court did not recognize that the Illinois parent-child tort immunity doctrine is not as well settled as the caselaw's progeny indicates. A careful analysis of the doctrine should have led the court to the conclusion that parent-child tort immunity doctrine causes inconsistent results. Recognition of these inconsistencies has caused other jurisdictions to revise or abrogate the doctrine. The *Stallman* court should have done the same. Because the parent-child tort immunity doctrine serves no legitimate purpose in modern society, the Illinois judiciary must recognize its uselessness and open the courts to the state's children.

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