

ADMIRALTY COMMITTEE

INVALIDITY OF PARENTAL RELEASES OF LIABILITY FOR COMMERCIAL RECREATIONAL ACTIVITIES FOR THEIR CHILD



Barbara Cook
Chair

In *Kirton v. Fields*, 997 So. 2d 349 (Fla. 2008), the Florida Supreme Court reviewed and approved the decision of the Fourth District Court of Appeal in *Fields v. Kirton*, 961 So.2d 1127 (Fla. 4th DCA 2007), which certified the following question to be of great public importance:

WHETHER A PARENT MAY BIND A MINOR'S ESTATE BY THE PRE-INJURY EXECUTION OF A RELEASE.

The issue in the case was the enforceability of a pre-injury release executed by a parent on behalf of a minor child who died when he lost control of his ATV during activities at a motor cross park. In arriving at its decision, the Florida Supreme Court analyzed the issue by reviewing the interests of the state, the U.S. and Florida constitutional rights of parents, the decisions of other Florida district courts, out of state precedent, and decisions in the federal courts, as follows:

"The enforceability of a pre-injury release concerns two compelling interests: that of the parents in raising their children and that of the state to protect children. Parental authority over decisions involving their minor children derives from the liberty interest contained in the Fourteenth Amendment to the United States Constitution and the guarantee of privacy in article I, section 23 of the Florida Constitution." *Kirton* at 352.

"A federal district court in Florida in two separate cases also found that pre-injury releases signed by parents on behalf of their minor children were invalid. See *In re Royal Caribbean Cruises Ltd.*, 459 F.Supp.2d 1275 (S.D.Fla.2006); *In re Royal Caribbean Cruises, Ltd.*, 403 F.Supp.2d 1168 (S.D.Fla.2005) (where both the father and minor child were injured on a jet ski that was owned by Royal Caribbean on the island of Coco Cay, Bahamas). In both cases, the federal district court reviewed out-of-state precedent and found that in cases involving school-sponsored or community-run activities the courts upheld pre-injury releases, and in cases involving commercial activities the courts have found the releases unenforceable. *In re Caribbean Cruises Ltd.*, 459 F.Supp.2d at 1280; *In re Royal Caribbean Cruises, Ltd.*, 403 F.Supp.2d at 1172." *Kirton* at 355.

"It cannot be presumed that a parent who has decided to voluntarily risk a minor child's physical well-being is acting in the child's best interest. Furthermore, we find that there is injustice when a parent agrees to waive the tort claims of a minor child and deprive the child of the right to legal relief when the child is injured as a result of another party's negligence. When a parent executes such a release and a child is injured, the provider of the activity escapes liability while the parent is left to deal with the financial burden of an injured child. If the parent cannot afford to bear that burden, the parties who suffer are the child, other family members, and the people of the State who will be called on to bear that financial burden.

Continued On Next Page . . .

Continued From Previous Page...

Therefore, when a parent decides to execute a pre-injury release on behalf of a minor child, the parent is not protecting the welfare of the child, but is instead protecting the interests of the activity provider. Moreover, a “parent’s decision in signing a pre-injury release impacts the minor’s estate and the property rights personal to the minor.” *Fields*, 961 So.2d at 1129-30. For this reason, the state must assert its role under *parens patriae* to protect the interests of the minor children. *Kirton* at 357-358

CONCLUSION

“For the reasons set forth above, we hold that a pre-injury release executed by a parent on behalf of a minor child is unenforceable against the minor or the minor’s estate in a tort action arising from injuries resulting from participation in a commercial activity. Accordingly, we answer the certified question in the negative, approve the decision of the Fourth District....” *Id.* at 358.

