3-1-1981

A Relational Approach to Negligent Infliction of Emotional Distress: Molien v. Kaiser Foundation Hospitals

Jordan W. Clements

Follow this and additional works at: https://digitalcommons.law.byu.edu/lawreview

Part of the Torts Commons

Recommended Citation

Available at: https://digitalcommons.law.byu.edu/lawreview/vol1981/iss1/20

This Casenote is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.
A Relational Approach to Negligent Infliction of Emotional Distress: *Molien v. Kaiser Foundation Hospitals*

In nearly all jurisdictions, a plaintiff seeking recovery for the negligent infliction of emotional distress must have suffered some physical injury either contemporaneous with or subsequent to the emotional harm in order to state a cause of action. One effect of this requirement has been to restrict recovery for emotional distress primarily to claims in which the plaintiff has suffered fright or shock in a single, traumatic incident—circumstances in which physical injury is likely to occur. Recovery for distress suffered as a result of emotional states such as humiliation, jealousy, or embarrassment has been effectively barred because these emotions are generally experienced in circumstances that do not produce any physical injury. Because the physical injury requirement has consistently weeded out cases involving the latter emotions, the distinction between fright or shock and these other emotions has never been recognized by the courts. In *Molien v. Kaiser Foundation Hospitals*, the California Supreme Court expressly abolished the physical injury requirement in all emotional distress cases and, more importantly, implicitly recognized a cause of action for emotional distress not caused by fright or shock and not suffered in a single, traumatic incident.


2. One commentator has observed:

[a](pplication of the 'physical injury' test in such a case [humiliation] has an Alice-in-Wonderland quality about it, because physical injury is not normally the likely result of the type of wrong committed. It is not as likely as it is, for example, in cases where a plaintiff is put in fear of violence, or attempts an escape from danger.


3. 27 Cal. 3d 916, 616 P.2d 813, 167 Cal. Rptr. 831 (1980).
I. Instant Case

The plaintiff, Stephen H. Molien, and his wife, Valerie, were members of a health plan serviced by the defendant hospital. The plan covered expenses Mrs. Molien incurred during a routine physical examination administered by Dr. Thomas Kilbridge, a Kaiser staff physician. Dr. Kilbridge erroneously concluded that Mrs. Molien had contracted syphilis. Although she did not actually have the disease, she received penicillin treatments and was instructed to tell her husband that she had the disease. Consequently, Mr. Molien underwent blood tests to determine whether he had transmitted the purported disease to his wife. Before it was discovered that Dr. Kilbridge's diagnosis was erroneous, Mrs. Molien began to suspect her husband's marital fidelity, which led to the eventual breakup of the Moliens' marriage. Mr. Molien brought an action against Kaiser Foundation Hospitals and Dr. Kilbridge, seeking recovery for the negligent infliction of emotional distress and for loss of consortium.

The trial court sustained the defendants' demurrer to both causes of action. The court of appeal affirmed, stating that Molien's "complaint for negligent infliction of emotional distress [was] deficient in two respects: (1) there was no corresponding physical injury and (2) the test of foreseeability [was] not met."6

On appeal the California Supreme Court reversed, holding that the plaintiff had stated a cause of action for the negligent infliction of emotional distress.7 Applying the foreseeability test, the court concluded that "[i]t is easily predictable that an erroneous diagnosis of syphilis and its probable source would produce marital discord and resultant emotional distress to a

4. Although Molien is significant because of its holding that a spouse may recover for loss of consortium when the other spouse suffers emotional harm but no physical injury, this Note will focus exclusively on the emotional distress issue. The interest protected by the tort of negligent infliction of emotional distress must be distinguished from the interests protected by the torts of loss of consortium and alienation of affections. The latter causes of action, which are typically relied upon in fact patterns similar to Molien, provide remedies for interference with the marriage relationship; whereas the tort of negligent infliction of emotional distress provides a remedy for interference with one's interest in being free from mental disturbance. Molien is therefore a hybrid in that Mr. Molien's mental tranquility was disturbed as a result of interference with his marriage.

7. The court rejected defendant's argument that the case should be decided according to the foreseeability test established in Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).
married patient’s spouse." Because the risk of harm was reasonably foreseeable, the doctor owed the plaintiff a duty to exercise due care in making the diagnosis.

The court then abolished the physical injury requirement in all emotional distress cases. It criticized the requirement as overinclusive in allowing recovery for emotional distress when accompanied by trivial physical injuries and as underinclusive in mechanically barring potentially valid claims. In addition, the court noted that the physical injury requirement "encourages extravagant pleading and distorted testimony." As a substitute for the physical injury requirement, the court adopted a standard articulated by the Supreme Court of Hawaii: "'[T]he general standard of proof required to support a claim of mental distress is some guarantee of genuineness in the circumstances of the case.'" The jury must determine whether a particular case meets this standard; if it concludes that the defendant’s conduct would cause emotional distress to a reasonable person in the plaintiff’s position, the genuineness standard is satisfied. Furthermore, the majority noted, there may be cases in which expert medical testimony can objectively ascertain the existence of emotional injury.

Justice Clark’s lone dissent voiced the concern that the court was creating a new cause of action which, because of the court’s failure to establish any limitations on a defendant’s liability, would have severe consequences. By abandoning the physical injury requirement, which had previously guarded against spurious claims, the court was opening the door to fraudulent suits. Justice Clark also noted that by holding a person liable for unintentionally caused emotional distress, the court was imposing liability far in excess of moral culpability.

II. ANALYSIS

Although Molien will frequently be cited for its rejection of the physical injury requirement, the court’s decision to grant recovery in a case involving neither fright nor shock is a more sig-

8. 27 Cal. 3d at 923, 616 P.2d at 817, 167 Cal. Rptr. at 835.
9. Id. at 929, 616 P.2d at 820, 167 Cal. Rptr. at 838.
10. Id. at 930, 616 P.2d at 821, 167 Cal. Rptr. at 839 (quoting Rodrigues v. State, 52 Hawaii 156, 172, 472 P.2d 509, 520 (1970)). The dissent in Molien criticized these “standards” as “nonstandards, opening wide the door to abuse.” 27 Cal. 3d at 935, 616 P.2d at 824, 167 Cal. Rptr. at 842 (Clark, J., dissenting).
11. 27 Cal. 3d at 930, 616 P.2d at 821, 167 Cal. Rptr. at 839.
nificant development. Most cases recognizing a cause of action for negligent infliction of emotional distress involve a plaintiff who has suffered automatic, reflexive emotional states such as fright or shock in response to some external stimulus. In addition,

[It is generally conceded by legal scholars that even under the most liberal theory of bystander recovery, the psychic impact upon the injured party must be "traumatic." That is, the principal cause of the psychological disability must be a single, sudden, or unexpected event; a shock to the bystander's mental and psychological equilibrium; or a trauma or "blow" to his nervous system.]

_Molien_ is novel in the field of emotional distress both as to the type of emotion involved and as to the event eliciting the emotion. Mr. Molien experienced neither fright nor shock, and his response to the doctor's negligent diagnosis was neither reflexive nor automatic. Rather, he experienced a composite of jealousy, anxiety, doubt, suspicion, humiliation, embarrassment, and various other emotions incident to rejected love in the marriage relationship. In addition, the event which directly preceded Mr. Molien's harm was not a spontaneous, isolated incident of immediate, shocking impact as in the typical case; instead the event eliciting the distress (the deterioration of the marriage) was an ongoing process of relatively long duration.

12. The courts have not recognized a distinction between fright or shock and other forms of mental anguish. Because physical injury is not likely to occur in cases involving these other emotions, the physical injury requirement has automatically barred recovery in all such cases. Brody, _supra_ note 2, at 233-38.

13. See id. at 254-55.

14. Simons, _Psychic Injury and the Bystander: The Transcontinental Dispute Between California and New York_, 51 St. John's L. Rev. 1, 16 (1976). Although the commentator refers specifically to bystander cases, the articulated rule is applicable to all emotional distress cases, as is evidenced by the commentator's summary of the principle: "In sum, the necessity of a 'traumatic' shock as the cause of psychic harm and resulting physical injuries is generally accepted in the law of torts . . . ." _Id._ at 17.

15. One commentator has noted the distinction between cases involving fright or shock and those involving indignities such as humiliation or embarrassment:

Where indignity or humiliation is the harm, it is the plaintiff's consciousness of the insult or the wrong and his sensitivity to it which gives rise to a deliberative reaction to the wrong. It is not so automatic a reaction, for example, as fright, or nausea from obnoxious matter in food, or an attempt to escape from peril, nor is it as readily foreseeable as these more automatic reactions. Brody, _supra_ note 2, at 254-55.

16. The distinction between immediate and ongoing harm was recognized by the Eighth Circuit in Owens v. Childrens Memorial Hosp., 480 F.2d 465 (8th Cir. 1973). In
Although Dr. Kilbridge’s negligent diagnosis triggered a chain of events which eventually resulted in Mr. Molien’s emotional harm, the isolated event of learning of the diagnosis did not cause immediate injury. After Dr. Kilbridge told Mrs. Molien that she had syphilis, she became suspicious of her husband’s fidelity, which caused extreme tension and anxiety in their relationship and the eventual breakup of the marriage. Mr. Molien sought recovery for the emotional distress suffered as a consequence of the marital strain experienced over this entire period of time—not for distress suffered incident to an isolated event as in the typical emotional distress cases.17

Although much of the court’s language suggests a broad sweep, the facts of Molien imply at least two restrictions on its holding. First, recovery should be limited to situations in which the emotional distress results from the breakup of a marriage or some similar significant relationship such as the parent-child relationship. Other, less binding relationships which might conceivably satisfy this requirement would have to be determined on a case by case basis. Second, only those persons standing in a special position of trust with respect to the relationship should be held liable for emotional harm caused by a negligent impairment of the relationship. Persons in addition to doctors who might satisfy this requirement are lawyers, accountants, psychologists, and clergymen.

The Molien court established the plaintiff’s right to be free

---

17. For an example of how the courts have typically dealt with emotional distress cases in which the harm does not arise out of fright or shock and is gradual rather than traumatic, see Howard v. Lecher, 42 N.Y.2d 109, 366 N.E.2d 64, 397 N.Y.S.2d 363 (1977). In Lecher, the parents of an infant girl born with Tay-Sachs disease sued their doctor for the emotional distress and mental anguish suffered in watching their daughter suffer severe pain and eventually die as a result of the disease. The parents alleged that the defendant was negligent in failing to inform them that as Eastern European Jews there existed a high risk that their child would be born with Tay-Sachs disease. Had they been informed, contended the parents, they could have avoided the trauma by aborting the pregnancy. The New York Court of Appeals held for the doctor, concluding that a plaintiff may not recover for mental distress suffered as a result of physical injuries sustained by a third party. Although the court did not explicitly recognize the difference between gradual and traumatic harm, Lecher is like Molien in that the parents’ emotional harm did not stem from fright or shock, but from some form of anguish unique to the parent-child relationship. In addition, the harm did not result from an isolated incident, but rather from a long deterioration of their daughter’s condition.
from the mental anguish of a broken marriage caused by another's negligent conduct. The emotional interests protected in *Molien* are special to the marriage relationship. Marriage is premised on the mutual investment of a high degree of love, trust, confidence, and faith in the relationship. Because of this intimacy and emotional involvement, each spouse is extremely vulnerable to emotional injury if the marriage is impaired. Damage to the relationship will almost certainly be translated into damage to each spouse's emotional interest in the marriage. Thus, dissolution of the marriage is itself an important guarantee that emotional distress has in fact been suffered. This obviates the need for a mechanical bar to prevent spurious claims such as the physical injury requirement.\(^\text{18}\) Courts interpreting *Molien* should recognize the significance of the marriage relationship in the case and limit future applications of the holding to cases in which similar relational interests are involved.

The second limitation on *Molien* stems from the position of trust occupied by Dr. Kilbridge. In *Molien* the issue was whether Dr. Kilbridge owed a duty of refraining from conduct that would impair Mr. Molien's emotional investment in his marriage. The court implicitly concluded that because of the trust inherent in a doctor-patient relationship, a doctor owes such a duty to a patient's spouse.\(^\text{19}\) Because of the intimacy of the marriage relationship, any time a doctor treats one spouse he is in a sense treating the relationship itself, particularly where the treatment implicates the spouse's fidelity.\(^\text{20}\) If, on the other hand, a lay person had told Mrs. Molien that she had contracted syphilis, there would have been little if any damage to the marriage. In the former case the position of trust held by the doctor with respect to the spouse causes a duty of due care to arise with

\(^{18}\) Although the court abolished the physical injury requirement, it did acknowledge a need for some means of preventing spurious claims and intended the "genuineness in the circumstances of the case" test to fill that need. "Although we recognize a need to guard against fraudulent claims, we are not persuaded that the presently existing artificial lines of demarcation are the only appropriate means of attaining this goal." 27 Cal. 3d at 927, 616 P.2d at 819, 167 Cal. Rptr. at 837.

\(^{19}\) It is easily predictable that an erroneous diagnosis of syphilis and its probable source would produce marital discord and resultant emotional distress to a married patient's spouse; Dr. Kilbridge's advice to Mrs. Molien to have her husband examined for the disease confirms that plaintiff was a foreseeable victim of the negligent diagnosis.

*Id.* at 923, 616 P.2d at 817, 167 Cal. Rptr. at 835.

\(^{20}\) Similarly, the court stated, "We thus agree with plaintiff that the alleged tortious conduct of defendant was directed to him as well as to his wife." *Id.*
respect to the relationship and hence to both parties to the relationship. In the latter case, no such trust exists with respect to the spouse and therefore no duty arises with respect to the relationship.

A failure to recognize these limitations would mean that a Molien-type plaintiff who has not suffered fright or shock and who has not suffered harm in an isolated, traumatic incident would encounter fewer obstacles in stating a cause of action than would a plaintiff in a bystander case who has suffered emotional harm resulting from the serious injury or death of a close relative in an automobile accident. The Molien rule applies when the harm to the plaintiff is "direct."\(^\text{21}\) In bystander cases, however, the injury is classified as "indirect" and the Dillon v. Legg\(^\text{22}\) rule is applicable. In Dillon, the California Supreme Court imposed a rigid standard of foreseeability in bystander cases, establishing three criteria that must be satisfied for the plaintiff to state a cause of action: (1) The plaintiff must have been near the scene of the accident; (2) The shock must have resulted from a direct emotional impact upon the plaintiff from the sensory and contemporaneous observance of the accident; (3) The plaintiff and the victim must have been closely related.\(^\text{23}\) In Molien, however, the court merely requires the jury to find that the injury is genuine. Not only is the distinction between "direct" and "indirect" injury murky,\(^\text{24}\) but the result produced by the application of differing standards of foreseeability is anomalous because the fright or shock suffered in a bystander case is more readily verifiable than are emotional states such as humiliation, embarrassment, or jealousy. For example, in Deboe v. Horn,\(^\text{25}\) the plaintiff was called to a hospital, where she was informed that her husband had been involved in a serious automobile accident which had caused total paralysis. The plaintiff sued the driver of the other automobile, seeking recovery for the mental suffering and emotional trauma she experienced upon learning of her husband's injuries. A California court of appeal sustained the defendant's demurrer, stating that no cause of ac-

---

21. Id. at 923, 616 P.2d at 816, 167 Cal. Rptr. at 834.
22. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).
23. Id. at 740-41, 441 P.2d at 920, 69 Cal. Rptr. at 80.
24. It is difficult to understand how the harm suffered by the spouse of a doctor's patient as a result of the doctor's negligent diagnosis is any more direct than the harm suffered by the mother of a child hit by a negligent driver. In each instance, the conduct triggering the plaintiff's harm was directed toward a close relative of the plaintiff.
25. 16 Cal. App. 3d 221, 94 Cal. Rptr. 77 (1971).
tion existed because the plaintiff was not present at the scene of the accident as required by Dillon. Under a broad reading of Molien, however, a plaintiff who claims he suffered mental distress upon learning from an acquaintance that his girlfriend had been "cheating" on him could allege a "direct" injury and thus get his case to the jury without first hurdling any similar legal barriers. And yet, the type of harm suffered in the latter scenario would seem to be more susceptible of sham than the type of harm suffered by the plaintiff in Deboe. Recognition of the limits implied by the relationships involved in Molien would avoid this anomaly.

III. CONCLUSION

Molien recognizes a cause of action for the negligent infliction of emotional distress although the harm does not arise out of fright or shock and the event eliciting the harm is a gradual process rather than a single, traumatic accident. However, courts deciding future mental distress cases should be aware of the peculiar nature of the emotional interests protected in Molien and recognize the special relationships involved. Future recovery should be restricted to those instances where a plaintiff has suffered emotional harm as a result of negligent interference with a significant relationship. Moreover, in determining who may be held liable, the courts should look for some relationship of trust between the alleged tortfeasor and the impaired relationship.

Jordan W. Clements