

## Negligent Infliction of Emotional Distress

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### Awareness of the Role the Defendant Played at the Time of Injury Not Required for Negligent Infliction of Emotional Distress Claim

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In *Downey v. City of Riverside*, 551 P.3d 1109 (Cal. 2024), Jayde Downey alleged a claim of negligent infliction of emotional distress (NEID) against the parties responsible for the condition of a roadway where her daughter sustained a motor vehicle accident. Because Ms. Downey was not aware of a causal relationship between her daughter's injuries and the defendants' alleged negligence in maintaining the roadway at the time of the crash, the superior court sustained the defendants' demurrer to the suit. In a case of first impression in California, the California Supreme Court held that contemporaneous awareness of the injury-causing event is not required to establish a claim for NEID.

#### Facts of the Case

In December 2018, plaintiff Jayde Downey was providing directions to her daughter by phone when she heard "her daughter suddenly gasp and say 'Oh!' in fear or shock and then heard sounds of explosive metal-on-metal vehicular crash, shattering glass, and rubber tires skidding or dragging across asphalt" (*Downey*, p 1111). After some time passed in which she did not hear her daughter's voice, she realized her daughter had been so severely injured that she could not speak. A stranger then rushed to the scene and quieted Ms. Downey over the phone so he could check her daughter's pulse.

After the crash, Ms. Downey brought lawsuits against the City of Riverside and Ara and Vahram

Sevacherian, owners of the private property next to the roadway where the accident took place. Ms. Downey sought damages for NEID. She alleged the city was responsible because "[t]he traffic markings, signals, warnings, medians, and fixtures thereon (or lack thereof), were so located constructed, placed, designed, repaired, maintained, used, and otherwise defective in design, manufacture and warning that they constituted a dangerous condition of public property" (*Downey*, p 1111). She alleged the Sevacherians were partially responsible for failure to maintain their property, as vegetation on the property obstructed the view of traffic at the intersection.

The defendants demurred the complaint, arguing that Ms. Downey could not allege a claim for NEID because, at the time of the accident, she did not know how the alleged negligence contributed to the emotional distress. The trial court agreed with the defendants and sustained the motion to demur, citing that allegations were "insufficient to show that Downey had a contemporaneous awareness of the injury-producing event — not just the harm Vance suffered, but also the causal connection between defendants' tortious conduct and the injuries Vance suffered" (*Downey*, p 1111).

Ms. Downey appealed, arguing that such a contemporaneous awareness was not necessary. In a divided opinion, the Fourth District Court of Appeal rejected this notion. The majority relied on a previous California Supreme Court case, *Bird v. Saenz*, 51 P.3d 324 (Cal. 2002). In *Bird*, a cancer patient's daughter was not awarded damages for emotional distress following incidental transection of her mother's artery during surgery, as the daughter had not witnessed the mother's injury-causing event. Similar to the *Bird* case, the court of appeal found relevant that Ms. Downey was only aware of the consequences of the injury-causing actions and did not personally experience the actions.

Justice Dato of the court of appeal wrote a concurring and dissenting opinion, disagreeing that Ms. Downey must plead that she was "aware of each and every separate act of negligence that may have contributed to the accident" (*Downey*, p 1111). His view was that a plaintiff seeking emotional distress damages only needs to be aware of the injury-causing event and that it is causing injury to the victim. The California Supreme Court granted review.

## Ruling and Reasoning

In a unanimous decision, the California Supreme Court ruled that the court of appeals erred in its finding that the plaintiff must be aware of the defendants' negligence at the time of the injury to receive emotional distress damages.

The court reviewed prior case law on emotional distress claims. In one of the court's previous cases, *Thing v. LaChusa*, 771 P.2d 814 (Cal. 1989), the court focused on "the traumatic emotional effect on the plaintiff who contemporaneously observes both the event or conduct that causes serious injury to a close relative and the injury itself" (*Thing*, p 829). In other words, the court did not require witnessing the negligent conduct itself that may have eventually led to the injury, so long as the injury-causing event was witnessed.

The court considered the lower court's interpretation of *Bird*. The California Supreme Court distinguished *Bird* as a medical malpractice case. In such a case, there is "no question that the injury-causing events were the defendants' act of medical negligence" (*Downey*, p 1117, quoting *Bird*). Such a case does not raise a question about awareness of an injury without awareness of the role the defendant played. *Bird* focused on the lack of awareness that an injury occurs at all, given a layperson's lack of medical expertise.

The court also examined several California cases in which the court had rejected any requirement of a contemporaneous understanding of the causal relationship between a defendant's conduct and a victim's injury. One such case was *Wilks v. Hom*, 3 Cal. Rptr. 2d 803 (Cal. Ct. App. 1992), in which the court held that a mother who had seen, heard, and felt an explosion that killed one of her daughters could receive damages for emotional distress, as "she personally and contemporaneously perceived the injury-producing event and its traumatic consequences" (*Wilks*, p 808), despite not knowing the negligent behavior that led to the explosion at the time it occurred.

The court found that Ms. Downey had pleaded sufficiently for her case to move forward for claims of NEID. The court stated that the prior case precedent did not preclude a plaintiff asserting bystander emotional distress to show a contemporaneous awareness of the causal link between the defendant's action and the victim's injuries. The case was remanded for further proceedings.

## Discussion

In this case, the California Supreme Court considered an extension of claims of NEID in California. The case illustrates how the law and mental health may define emotional distress differently. Mental health clinicians commonly rely on diagnostic assessments when considering the effects of traumatic or other stressors. As stated in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) (Washington, DC: American Psychiatric Association, 2022), Criterion A of the diagnosis posttraumatic stress disorder (PTSD) requires "Exposure to actual or threatened death, serious injury, or sexual violence," which can include "witnessing" the event or "learning that the traumatic event(s) occurred to a close family member or close friend" (DSM5-TR, p 301). It would not be surprising if someone in a position similar to Ms. Downey were to be diagnosed with PTSD.

Under the law, however, the definition of emotional distress and what a plaintiff must demonstrate for an award of damages may be different than what is seen as emotional distress in a clinical setting.

The court in *Downey* recognized that persons can be emotionally affected by events, even when they lack a contemporaneous perception of the defendant's contributions to the victim's injuries and that the plaintiff could indeed move forward with her claim of NEID under the law.

This ruling clarified that the plaintiff need not be aware, at the time of the injury, of the negligent actions undertaken by the defendants. What this case does not answer is what should be made of the hypothetical scenario in which a mother learns of her daughter's severe injury or death at some time after the accident occurs. This demonstrates a significant and continuing difference between how the court recognizes damages for trauma and how the discipline of mental health views trauma. This scenario may present as a future case.

This case is instructive for experts who conduct assessments of emotional damages in California. Forensic psychiatrists are commonly asked to evaluate the psychological impact that the injury-causing event has on the claimant by conducting a full psychiatric evaluation of the plaintiff, diagnosing, assessing causation between the negligent act and the emotional distress, reviewing the authenticity of the emotional distress claim, and assessing the severity of any emotional distress.