

## LAW REVIEW

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### HOMEOWNER RESPONSIBLE FOR CHILD'S DROWNING?

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2-year old Eddie Padilla and his mom Leslie were spending the day at Leslie's sister's home in Granada Hills, California. Leslie's sister, Vilma Lopez, was not home but her partner Ismael Rodas was.

Leslie and Rodas were watching Eddie play with his cousins when Rodas left to take a call on his cordless phone. Leslie saw Rodas leave. Eddie asked Leslie for a glass of water. She went to fetch the water telling the 7 and 9-year old cousins to keep an eye on Eddie. She was gone for only five minutes.

Leslie found Eddie face down in the pool and paramedics were not able to revive him.

This is one of those *how-in-the-world-did-this-happen* nightmares.

### HOMEOWNERS SUED

Leslie sued her sister Lopez and Lopez's partner Rodas, claiming her sister and Rodas had a duty to supervise Eddie, and also that one of the two side gates to the swimming pool area did not have a self-latching mechanism as required by the City of Los Angeles Municipal Code.

## DUTY TO SUPERVISE

The Court of Appeal analyzed Leslie's claim that Lopez and Rodas, as pool owners, assumed a joint parental duty to supervise Eddie, and that in fact Rodas was watching Eddie with Leslie before she left to get a glass of water.

The Court noted that Leslie knew that Rodas had abandoned any supervisory responsibility when he left her in charge of Eddie to take a phone call, adding that it was not "reasonably foreseeable" that Leslie would leave 2-year old Eddie outside unattended or under the supervision of other young children, while she went inside the house for a glass of water.

The Court wrote, "Imposing a duty under the circumstances of this case would unreasonably burden social and family relationships, requiring homeowners to provide baby-sitting services for their guests' young children when the children's parents also were on the premises. Imposition of such a duty on homeowners would make them insurers of their guests' children's safety even when the parents were also on the premises..."

## PRECEDENT

The California Court of Appeal distinguished a Florida case where a homeowner left the neighbor's 5-year old and other young children in the swimming pool area unattended for 30 minutes, finding liability.

The Court analogized to an Illinois case where the homeowners who were busy hosting a party, were found not responsible for a neighbor's drowning as the mother of the child had been watching her daughter in the pool but stepped away momentarily when she drowned. The Court found little Eddie's situation similar to the Illinois case.

## NO SELF-LATCHING GATE

The Court looked at Leslie's contention that a self-latching gate would have prevented Eddie's drowning.

On this issue the Court concluded that given there were two open gates plus a sliding door leading from the house to the pool area, and as no one knew how Eddie gained entrance to the pool, it would be mere speculation and conjecture to say that Eddie's drowning was "caused" by the defective gate. The mere possibility that the gate may have contributed to Eddie's death was not sufficient to impose liability on homeowners Lopez and Rodas.

So in the end, an entire family is traumatized. I guess the lesson is you can't be too safe when you have very young children around a swimming pool or open water.

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