

A bright 12-year-old child attended a day-care center after school. The center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice-skating when conditions were suitable. At a time when the pond was obviously only partially frozen, the child sneaked away from the center's property and walked out onto the ice over the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby.

At the time of the incident, the pond was clearly marked with numerous signs that stated, "THIN ICE—KEEP OFF." When the child sneaked away from the day-care center, the center was staffed with a reasonable number of qualified employees, and the employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. There had not been a previous instance of a child coming onto the corporation's property from the day-care center. The jurisdiction follows a rule of pure comparative negligence.

In a suit brought on the child's behalf against the day-care center and based only on the facts above, who is likely to prevail?

- A. The child, because he left the center while he was under the center's care.
- B. The child, because the day-care center is located near a pond.
- C. The day-care center, because it was not negligent.
- D. The day-care center, because the child was a trespasser.

## Explanation:

### Special relationships

#### imposing duty to protect others

Parent/child

Hospital/patient

Employer/employees

Shopkeeper/business invitees

Common carrier/passengers

Custodian/person in custody

Innkeeper/guests

Mnemonic: **P**lease **H**elp **E**liminate **S**afety **C**oncerns **C**ausing **I**njuries

**Negligence** requires proof of all of the following **elements**: duty, breach, causation, and damages. The **duty** element is satisfied if (1) the defendant's conduct created a foreseeable risk of harm to others or (2) the defendant had a **special relationship** with the plaintiff (eg, custodian of a child). To prove **breach**, the plaintiff must introduce evidence that the defendant **failed to use reasonable care**. If such evidence is lacking—or if the defendant introduces sufficient counterevidence—then the defendant will prevail.

Here, the 12-year-old child sneaked away from the day-care center and suffered shock after falling into a nearby duck pond. The center had a duty to protect the child since he was under its care **(Choice A)**. And this duty may have required extra vigilance since the center was located near a pond **(Choice B)**. But there is no evidence that the center breached this duty by failing to use reasonable care. Instead, the following facts tend to show that the center was *not* negligent:

The center was staffed with a *reasonable* number of qualified employees.

The employees were exercising *reasonable care* to ensure that the children in their charge did not leave the premises.

No child had previously come onto the corporation's property from the center.

Therefore, the day-care center will likely prevail.

**(Choice D)** The duck pond is located on the property of the corporation—not the day-care center. As a result, the child's status as a **trespasser** would only be relevant had he sued the corporation instead of the center.

## Educational objective:

For a negligence claim, the duty element is satisfied if (1) the defendant's conduct created a foreseeable risk of harm to others or (2) the defendant had a special relationship with the plaintiff (eg, custodian of a child). That duty is breached if the defendant failed to use reasonable care.

### **References**

Restatement (Second) of Torts § 314A (Am. Law Inst. 1965) (explaining that certain special relationships give rise to a duty to aid or protect).

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