

A photographer with no climbing experience fell while attempting to climb a mountain alone. He lay unconscious and critically injured on a ledge that was difficult to reach. A nearby tourist was seriously injured while trying to rescue the photographer. The tourist made a reasonable attempt to rescue the photographer, but his attempt failed, and the photographer died from his injuries before he could be reached.

The tourist brought an action against the photographer's estate for compensation for his injuries. In this jurisdiction, the traditional common law rules relating to contributory negligence and assumption of risk remain in effect.

Will the tourist prevail in his action against the photographer's estate?

- A. No, because the tourist was contributorily negligent for undertaking a dangerous rescue.
- B. No, because the tourist's rescue attempt failed and therefore did not benefit the photographer.
- C. Yes, because the law should not discourage attempts to assist persons in helpless peril.
- D. Yes, because the photographer's peril arose from his own failure to use reasonable care.

Explanation:

Persons who endanger themselves or others owe a duty of reasonable care to potential rescuers because it is foreseeable that they could be injured in a rescue attempt. Under this **rescue doctrine**, a plaintiff-rescuer can establish a prima facie negligence case by proving that:

he/she was **injured while attempting to rescue** another *and* that person's **peril was caused by** the defendant's **failure to use reasonable care** (ie, negligence).

Here, the tourist was seriously injured while trying to rescue the photographer. The photographer's peril arose from his own failure to use reasonable care since he went mountain climbing alone and with no prior experience. Therefore, the tourist can establish a prima facie negligence case. But in this **common law jurisdiction**, the tourist is **barred from recovery** if he:

knew that the rescue attempt was dangerous and could have proceeded in a reasonable alternative manner (ie, **assumption of the risk**) *or*

acted unreasonably during the rescue attempt (ie, **contributory negligence**).

There is no evidence that the tourist could have helped the photographer in a reasonable alternative manner since he was critically injured on a ledge that was difficult to reach (no assumption of risk). And the tourist acted reasonably during the rescue attempt (no contributory negligence) **(Choice A)**. As a result, he will likely prevail in an action against the photographer's estate.

(Choices B & C) The rescue doctrine seeks to encourage (not discourage) attempts to assist persons in helpless peril. As a result, the tourist can prevail even though his reasonable rescue attempt failed and did not benefit the photographer. But the tourist must first show that the photographer's peril arose from his own negligence.

Educational objective:

The rescue doctrine allows a plaintiff-rescuer to establish a prima facie negligence case by proving that (1) he/she was injured while attempting to rescue another and (2) that person's peril was caused by the defendant's failure to use reasonable care.

References

Restatement (Second) of Torts § 472 (Am. Law Inst. 1965) (explaining that a rescuer is not contributorily negligent for confronting danger unless the rescue attempt is unreasonable or he/she acts unreasonably).

Restatement (Second) of Torts § 496E (Am. Law Inst. 1965) (explaining that a rescuer does not voluntarily assume the risk if the defendant's tortious conduct left no reasonable alternative to avert harm to the rescuer or another).

Rescue doctrine

