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Tort Law - What Happened to Duty in Wyoming - Negligent Supervision of Minors, Loss of Sibling's Consortium, Duty to Inspect One's Premises, and Negligent Infliction of Emotional Distress; *Hendricks v. Hurley*, 184 P.3d 680 (Wyo. 2008)

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CASE NOTE

TORT LAW—What Happened to Duty in Wyoming? Negligent Supervision of Minors, Loss of a Sibling’s Consortium, Duty to Inspect One’s Premises, and Negligent Infliction of Emotional Distress; *Hendricks v. Hurley*, 184 P.3d 680 (Wyo. 2008).

*Erin Murphy**

INTRODUCTION

On July 31, 2004, an eight-year-old boy, Ryan Hendricks, suffered electrocution and died after simultaneously touching an outdoor water hydrant and an ungrounded well head while playing in the yard at his grandparents’ home.¹ Though he screamed and fell to the ground, the other children playing in the yard thought he was joking and failed to immediately realize his injury.² After trying to rouse Ryan with no success, one of the children notified Ryan’s grandparents, the Hurleys.³ Mr. Hurley carried Ryan into the home and performed CPR while Mrs. Hurley called for emergency medical personnel.⁴ The Hurleys called Ryan’s father, Shawn Hendricks, who arrived on the scene a short time later.⁵ Shawn called his wife, Linda, and informed her of the situation as the paramedics tried to revive their son.⁶ Paramedics could not revive Ryan at the scene and took him to the hospital where he later died.⁷ An inspection of the well by a professional from the energy company revealed an electrical short at the well cap from the pump caused the electrocution.⁸ When Ryan touched the water hydrant and the metal well cap simultaneously, he became grounded between the two, as approximately 242 volts of electricity passed through him.⁹

Ryan’s mother, Linda Hendricks, sued the Hurleys on Ryan’s behalf for failure to use reasonable care in inspecting the well on their property and for

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¹ *Hendricks v. Hurley*, 184 P.3d 680, 681 (Wyo. 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Answer of Petitioner at 7, *Hendricks v. Hurley*, 184 P.3d 680 (Wyo. 2008) (No. S-007-0178).

⁶ *Hendricks*, 184 P.3d at 681.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

negligent supervision of the child.¹⁰ Linda Hendricks claimed damages on her own behalf for negligent infliction of emotional distress, and on behalf of Ryan's siblings for loss of consortium.¹¹ The District Court of Laramie County granted the grandparents' summary judgment motion and Linda Hendricks appealed.¹² The issues before the Supreme Court of Wyoming included whether the district court properly granted summary judgment on: 1) Hendricks's claim of negligent supervision on behalf of her son, 2) the loss of consortium claim on behalf of Ryan's siblings, 3) Hendricks's claim of negligent inspection on behalf of her son, and 4) the claim of negligent infliction of emotional distress on Hendricks's own behalf.¹³

This case note will first outline the four areas of Wyoming law under which Linda Hendricks brought her claims: the duty to supervise minors, loss of consortium, premises liability, and negligent infliction of emotional distress.¹⁴ Next, this note will examine the *Hendricks* court's ruling under those areas of law and argue the court ruled correctly on all four of Hendricks's claims.¹⁵ However, the court would have been more persuasive in its ruling on negligent supervision had it evaluated the claim based on the traditional eight-factor test used in Wyoming for assessing the imposition of duty.¹⁶ Finally, this note will examine the current state of Wyoming law regarding a plaintiff's claim for loss of consortium of a sibling.¹⁷

BACKGROUND

The Supreme Court of Wyoming does not recognize a claim for negligent supervision of minors.¹⁸ In causes of action for loss of consortium the court has yet to address a plaintiff's right to recover for loss of consortium based on injuries to a sibling. In premises liability actions, Wyoming treats trespassers as a distinct group and applies the rule of "reasonable care under the circumstances" to all

¹⁰ *Id.* at 684. John and Maureen Hurley purchased their home near Cheyenne, Wyoming in 2003. *Id.* at 683. The home inspection done prior to the purchase indicated on its cover page that the inspection did not include any features on the property outside of the actual residence. Brief of Petitioner at 3, *Hendricks v. Hurley*, 184 P.3d 680 (Wyo. 2008) (No. S-007-0178). The Hurleys had no work done on the well prior to the incident and the well head cover completely hid most of the wire connections of the well. *Hendricks*, 184 P.3d at 683–84.

¹¹ *Hendricks*, 184 P.3d at 684.

¹² *Id.* at 682.

¹³ *Id.* at 681.

¹⁴ See *infra* notes 18–55 and accompanying text.

¹⁵ See *infra* notes 56–166 and accompanying text.

¹⁶ See *infra* notes 105–42 and accompanying text.

¹⁷ See *infra* notes 143–53 and accompanying text.

¹⁸ *Hendricks*, 184 P.3d at 685.

other entrants.¹⁹ Finally, the court recognizes claims for negligent infliction of emotional distress (hereinafter “NIED”), but places limits on who can recover and when.²⁰

Negligent Supervision (Duty to Supervise)

In her first claim, Hendricks argued the Hurleys had a duty to supervise her son Ryan.²¹ Most jurisdictions, including Wyoming, do not hold a possessor of land liable for failing to supervise the activities of minors.²² However, other jurisdictions have addressed the issue of negligent supervision and have formally recognized this tort.²³ Some courts hold an occupier of land liable for injuries to a child if the child’s guardian entrusts the occupier with the supervision of that child and lack of supervision is the act of negligence causing the injury.²⁴ While these authorities hold a person entrusted with the child’s supervision owes a duty of reasonable care to keep the child safe, that duty does not extend to unforeseeable circumstances.²⁵

¹⁹ Clarke v. Beckwith, 858 P.2d 293, 295–96 (Wyo. 1993).

²⁰ Gates v. Richardson, 719 P.2d 193, 195–203 (Wyo. 1986).

²¹ Hendricks, 184 P.3d at 685.

²² 62 AM. JUR. 2D *Premises Liability* § 263 (2008); Hendricks, 184 P.3d at 685. The Supreme Court of Wyoming has not addressed this issue. However, when deciding whether to impose a common law duty upon a defendant under the theory of negligence, the court traditionally balances eight factors. Daniels v. Carpenter, 62 P.3d 555, 563 (Wyo. 2003) (citing Duncan v. Afton, Inc., 991 P.2d 739, 742 (Wyo. 1999) (citing ABC Builders, Inc. v. Phillips, 632 P.2d 925, 932 (Wyo. 1981))). The eight factors include the foreseeability of the harm to the plaintiff; the closeness of the connection between the defendant’s conduct and the injury suffered; the degree of certainty that the plaintiff suffered injury; the moral blame attached to the defendant’s conduct; the policy of preventing future harm, the extent of the burden upon the defendant; the consequences to the community and the court system; and the availability; cost and prevalence of insurance for the risk involved. Gates, 719 P.2d at 196 (quoting Tarasoff v. Regents of U. of Cal., 551 P.2d 334, 342 (Cal. 1976)).

²³ See, e.g., Daniel N. McPherson, *Missouri Law on Negligent Supervision*, 59 J. Mo. B. 127, 127–29 (2003) (discussing requirements under Missouri law for negligent supervision claims); A.R.H. v. W.H.S., 876 S.W.2d 687, 689 (Mo. Ct. App. 1994); Broadbent v. Broadbent, 907 P.2d 43, 50 (Ariz. 1995); Bang v. Tran, 1997 Mass.App.Div. 122, 124 (Mass. Dist. Ct. App. Div. 1997); Gullede v. Gullede, 367 N.E.2d 429, 431 (Ill. App. 4th Dist. 1977); Busillo v. Hetzel, 374 N.E.2d 1090, 1091–92 (Ill. App. 1st Dist. 1978); Oakley v. State, 298 N.E.2d 120, 120 (N.Y. 1973).

²⁴ See, e.g., 62 AM. JUR. 2D *Premises Liability* § 263 (2008); 65 C.J.S. *Negligence* § 81 (2008); Barry v. Cantrell, 258 S.E.2d 61, 63–64 (Ga. 1979); Babula v. Robertson, 536 N.W.2d 834, 837–38 (Mich. 1995); Adolph E. by Susan E. v. Lori M., 166 A.D.2d 906, 906 (N.Y.A.D. 4th Dept. 1990).

²⁵ See 65 C.J.S. *Negligence* § 81 (2008); Barrera v. Gen. Elec. Co., 378 N.Y.S.2d 239, 241 (N.Y. Sup. Ct. 1975) (holding when one, other than a parent, undertakes to control an infant, the person becomes responsible for any injury proximately caused by his or her negligence; the person is required to use reasonable care, measured by the reasonable person standard, to protect the infant he or she has assumed temporary custody and control over).

While a possessor of land is not responsible for supervising the activities of minors on his or her property, the Supreme Court of Wyoming has held a driver of an automobile liable for supervision over activities of minor passengers.²⁶ In *Dellapenta v. Dellapenta*, the court held parents have a duty to buckle the seatbelts of their minor passengers who depend on adult care and supervision for their well-being and safety.²⁷ The court, however, clearly limited its holding to the facts of that case and stated the ruling did not create a general duty of supervision.²⁸

Loss of Consortium

The basis of Hendricks's second claim, loss of consortium, is the recognition of a legally protected interest in personal relationships and the effects negligent or intentional acts of others may have beyond those suffered by the injured party.²⁹ The claim recognizes loss of the comfort, society, and companionship of an injured person with the appropriate relationship to the plaintiff.³⁰ In Wyoming, a claim for loss of consortium is derivative of the injured party's claim; therefore, the loss of consortium claim must fail if the injured party's underlying claim fails.³¹ The Supreme Court of Wyoming allows recovery for the loss of a spouse's consortium and the loss of a parent's consortium.³² However, the court does not allow parental claims for loss of a child's consortium and has not addressed a claim for loss of consortium based on the death or injuries inflicted on a plaintiff's sibling.³³

With respect to a plaintiff's right of recovery for damages resulting from the loss of his or her sibling's consortium, only five jurisdictions recognize this claim and six courts expressly hold the siblings of a deceased child cannot recover under this claim.³⁴ The Supreme Court of Wyoming, along with many other jurisdictions, has yet to address this issue.

²⁶ *Dellapenta v. Dellapenta*, 838 P.2d 1153, 1160 (Wyo. 1992).

²⁷ *Id.*

²⁸ *Id.* at 1158–59.

²⁹ See 24 CAUSES OF ACTION 2D 427 § 1 (2008).

³⁰ *Hannifan v. Am. Nat. Bank of Cheyenne*, 185 P.3d 679, 681 (Wyo. 2008).

³¹ *Worman v. Carver*, 44 P.3d 82, 89 (Wyo. 2002) (citing *Massengill v. S.M.A.R.T. Sports Med. Clinic, PC*, 996 P.2d 1132, 1137 (Wyo. 2000)).

³² *Weaver v. Mitchell*, 715 P.2d 1361, 1369 (Wyo. 1986) (holding both husbands and wives may recover for loss of a spouse's consortium); *Nulle v. Gillete–Campbell Co. Jt. Powers Fire Bd.*, 797 P.2d 1171, 1175 (Wyo. 1990) (holding a child may recover for loss of consortium of a parent).

³³ *Gates*, 719 P.2d at 201.

³⁴ See Elizabeth Trainor, Annotation, *Who, Other Than Parent, May Recover for Loss of Consortium on Death of Minor Child*, 84 A.L.R. 5TH 687 (2000). The following cases recognize the claim: *In re Estate of Finley*, 601 N.E.2d 699 (Ill. 1992); *In re Air Crash Disaster at New Orleans, La.*, 795 F.2d 1230 (5th Cir. 1986) (applying Louisiana law); *Thornton v. Ins. Co. of N. Am.*, 287 So. 2d 262 (Miss. 1973); *Leavy v. Yates*, 142 N.Y.S.2d 874 (Sup. Ct. 1955); *Complaint of Patton-Tully Transp. Co.*, 797 F.2d 206 (5th Cir. 1986). The following cases expressly disallow the

Premises Liability

For Hendricks's third claim based on premises liability, the traditional common law duty of care an occupant of real property owes a person injured on his or her premises depends upon the legal status of the entrant at the time of the accident.³⁵ In *Clarke v. Beckwith*, the Supreme Court of Wyoming altered premises liability law in Wyoming and chose to treat trespassers as a distinct group, but adopted the rule of "reasonable care under the circumstances" for all other entrants.³⁶ In articulating the new rule, it held the possessor of land must act reasonably in maintaining his or her property in a safe condition in light of all of the circumstances, including the likelihood of injury, the seriousness of the injury, and the burden of avoiding the risk.³⁷ The court indicated the foreseeability of the injury, rather than the traditional status of the lawful entrant, is now the basis for premises liability in Wyoming.³⁸

In *Goodrich v. Seamands*, the court held a possessor of land liable if he or she has reason to know a dangerous condition exists.³⁹ The court held a person has "reason to know" when that person has information from which someone of reasonable intelligence, or by his own superior intelligence, would infer a certain condition exists and realize the condition involves an unreasonable risk of harm.⁴⁰ More than ten years later, in *Landsiedel v. Buffalo Properties, LLC*, the court again addressed the issue of premises liability and, when prompted by the plaintiff, expressly refused to impose upon occupants the duty to inspect their property.⁴¹

claim; *Solomon v. Harman*, 489 P.2d 236 (Ariz. 1971); *Scalise v. Bristol Hosp.*, 1995 WL 410751 (Conn. Super. Ct. 1995); *Clark v. Jones*, 658 P.2d 1147 (Okla. 1983); *Ford Motor Co. v. Miles*, 967 S.W.2d 377 (Tex. 1998); *In Long v. Dugan*, 788 P.2d 1 (Wash. 1990); *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

³⁵ Vitauts M. Gulbis, Annotation, *Modern Status of Rules Conditioning Landowner's Liability upon Status of Injured Party as Invitee, Licensee, or Trespasser*, 22 A.L.R. 4TH 294 § 2(a) (1983). The categories of entrants include trespassers, licensees, and invitees. *Id.*

³⁶ *Clarke*, 858 P.2d at 296.

³⁷ *Id.*

³⁸ *Id.*

³⁹ 870 P.2d 1061, 1064–65 (Wyo. 1994) (quoting RESTATEMENT (SECOND) OF TORTS § 353 (1965)). In the *Goodrich* case, a patron filed a negligence suit against a vendor for failing to discover, disclose, and warn of a latent defect in the construction of a ceiling and ceiling fan when the ceiling tiles and fan fell on her, causing injury. *Id.* at 1062.

⁴⁰ *Id.* at 1064–65 (quoting RESTATEMENT (SECOND) OF TORTS, § 12(1) (1965)).

⁴¹ 112 P.3d 610 (Wyo. 2005). The plaintiff offered a jury instruction imposing on the premises owners an explicit duty to inspect. *Id.* at 615. The plaintiff argued the court should adopt the Restatement Second of Torts, as the court recognized essentially the same rule in previous cases. *Id.* The court noted the instruction offered by the plaintiff went much further than the rule recognized in the previous cases or the Restatement because it imposed an express duty to inspect. *Id.*

Negligent Infliction of Emotional Distress

Hendricks's fourth claim, negligent infliction of emotional distress ("NIED"), allows a claimant to recover for emotional damages after witnessing a tragic accident in which someone known to the plaintiff is seriously injured or killed.⁴² The plaintiff must show he or she has the requisite relationship to the injured party, and that he or she observed the infliction of serious bodily harm or death, or its immediate aftermath, without material change in the condition or location of the victim.⁴³ A claimant must also prove the defendant's negligence and that his or her negligence proximately caused the plaintiff's mental injuries.⁴⁴

Traditionally, states have required the plaintiff to show actual or threatened physical impact in conjunction with the emotional harm suffered.⁴⁵ In *Gates v. Richardson*, the seminal NIED case in Wyoming, the court recognized a negligent defendant's liability for purely emotional damages.⁴⁶ While not requiring a showing or threat of physical impact makes the court slightly liberal in its requirements for damages in these cases, the court limited a plaintiff's ability to claim he or she observed the immediate aftermath of the injury or death in *Contreras By and Through Contreras v. Carbon County School District # 1*.⁴⁷ In that case, the Wyoming Supreme Court articulated the "immediacy test," applying it to all situations in which a plaintiff does not actually observe the accident.⁴⁸ Under this test, the court allowed some time to exist between the moment of injury and the time at which the plaintiff observed the victim.⁴⁹ However, once the victim's condition or location materially changes, the "moment of crisis" is over, regardless of how little time passed between the accident and the plaintiff's observation.⁵⁰ The court also held that a plaintiff may not recover for NIED if he or she does not see the victim until after the victim is in a hospital.⁵¹

⁴² *Hendricks*, 184 P.3d at 686 (citing *Gates*, 719 P.2d at 199).

⁴³ *Id.*

⁴⁴ *Id.* (citing *Gates*, 719 P.2d at 201).

⁴⁵ *Larsen v. Banner Health Sys.*, 81 P.3d 196, 199 (Wyo. 2003) (citing *Gates*, 719 P.2d at 195) (citing W. KEETON, PROSSER AND KEETON ON TORTS § 54, at 362-64 (5th ed. 1984)).

⁴⁶ *Gates*, 719 P.2d at 198. In *Gates*, plaintiff brought an action for negligent infliction of emotional distress following an accident in which an automobile collided with a bicycle ridden by a child. *Id.* at 193. The Supreme Court of Wyoming held a plaintiff could recover under an NIED claim if he or she observed the infliction of serious bodily harm or death, or if he or she observed the harm shortly after its occurrence, but without material change in the condition or location of the victim. *Id.* at 199.

⁴⁷ 843 P.2d 589, 593 (Wyo. 1992).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 594.

In sum, the Supreme Court of Wyoming does not recognize a general duty to supervise minors, though regular negligence principles still apply.⁵² Wyoming does recognize derivative claims of loss of consortium for spouses and children; however, the court does not recognize a parent's claim and has yet to address whether plaintiffs can recover for loss of consortium for an injured sibling.⁵³ Wyoming does not recognize a duty to inspect one's premises, though the law imposes a duty of reasonable care under the circumstances when entrants are licensees and invitees.⁵⁴ Finally, Wyoming does recognize the tort of negligent infliction of emotional distress and allows recovery for purely emotional damages; however, the court places specific limitations on when a plaintiff can recover.⁵⁵

PRINCIPAL CASE

After Ryan Hendricks's electrocution by an improperly wired well head at his grandparents' home, his mother, Linda Hendricks, asserted multiple claims against the Hurleys.⁵⁶ In a unanimous decision, the Supreme Court of Wyoming affirmed the district court's grant of summary judgment in favor of the Hurleys for all of Hendricks's claims.⁵⁷

Negligent Supervision

For her negligent supervision claim, Hendricks argued Wyoming recognizes a general common law duty to supervise minors.⁵⁸ In advancing this argument, Hendricks used *Daniels v. Carpenter* to support her claim that the court must decide whether a duty exists, and a duty will exist under the theory of negligence when society says it should exist.⁵⁹

The *Daniels* court held that when deciding whether to impose a common law duty on a defendant under the theory of negligence, the court must balance eight factors.⁶⁰ In her brief, Hendricks analyzed each of the eight factors as they

⁵² *Hendricks*, 184 P.3d at 685.

⁵³ See *Weaver*, 715 P.2d at 1361; *Gates*, 219 P.2d at 201.

⁵⁴ *Clarke*, 858 P.2d at 295.

⁵⁵ *Gates*, 719 P.2d 193.

⁵⁶ *Hendricks v. Hurley*, 184 P.3d 680, 681 (Wyo. 2008).

⁵⁷ *Id.*

⁵⁸ *Id.* at 684.

⁵⁹ *Daniels v. Carpenter*, 62 P.3d 555, 563 (Wyo. 2003) (quoting *Duncan v. Afton, Inc.*, 991 P.2d 739, 742 (Wyo. 1999) (citing *ABC Builders, Inc. v. Phillips*, 632 P.2d 925, 932 (Wyo. 1981))).

⁶⁰ *Daniels*, 62 P.3d at 563. When analyzing whether to impose a duty under common law for the purpose of a negligence claim, the court balances eight factors first recognized in *Gates v. Richardson*: (1) the foreseeability of harm to the plaintiff, (2) the closeness of the connection between the defendant's conduct and the injury suffered, (3) the degree of certainty that the plaintiff suffered injury, (4) the moral blame attached to the defendant's conduct, (5) the policy of preventing future

pertained to this case and concluded the defendants had a duty to supervise the child and a jury should have determined whether there was a breach of that duty.⁶¹

In advancing her argument, Hendricks cited *Dellapenta v. Dellapenta*, in which the court held parents have a duty to buckle the seatbelts of their minor passengers who depend on adult care and supervision for their well-being and safety.⁶² Hendricks argued *Dellapenta* imposed a duty similar to the one she asserted and she argued there must be some significance in the *Dellepenta* court directly quoting a New Jersey case recognizing negligent supervision.⁶³

The court, however, held Hendricks's interpretation of *Daniels* and *Dellapenta* incorrect.⁶⁴ First, the court indicated the *Daniels* court upheld the dismissal of a claim for negligent supervision against property possessors by applying what the *Hendricks* court called "the usual test for imposition of a duty under common law negligence."⁶⁵ This test imposes a duty of reasonable care to avoid injury only where it is reasonably foreseeable a failure to use such care might result in injury.⁶⁶ The *Daniels* court held an allegation to supervise minors, without more, cannot establish a duty.⁶⁷

Second, the court distinguished *Dellapenta* by asserting the *Dellepenta* court clearly limited its holding to the facts of that case and in no way created a general common law duty of supervision.⁶⁸ As the *Hendricks* court noted, it based its decisions in both *Daniels* and *Dellapenta* on the foreseeability of the danger to victims, not a general duty to supervise.⁶⁹ Since no general duty to supervise exists in Wyoming the court affirmed the lower court's grant of summary judgment in the Hurleys' favor.⁷⁰

harm, (6) the extent of the burden upon the defendant, (7) the consequences to the community and the court system, and (8) the availability, cost and prevalence of insurance for the risk involved. *Id.* at 563 (citing *Gates*, 719 P.2d at 196 (quoting *Tarasoff v. Regents of U. of Cal.*, 551 P.2d 334, 342 (Cal. 1976))).

⁶¹ Brief of Petitioner, *supra* note 10, at 20–23.

⁶² *Hendricks*, 184 P.3d at 685 (quoting *Dellapenta v. Dellapenta*, 838 P.2d 1153, 1160 (Wyo. 1992)).

⁶³ Brief of Petitioner, *supra* note 10, at 22 (citing *Foldi v. Jeffries*, 461 A.2d 1145, 1152 (N.J. 1983)).

⁶⁴ *Hendricks*, 184 P.3d at 685.

⁶⁵ *Id.* (citing *Daniels*, 62 P.3d at 563).

⁶⁶ *Id.*

⁶⁷ *Id.* at 685 (quoting *Daniels*, 62 P.3d at 564).

⁶⁸ *Id.* The *Dellapenta* court stated it only imposed a duty on parents to buckle their minor children's seat belts after an extensive showing that national and state statistics make serious injury or death a foreseeable result of not wearing a seat belt. *Dellapenta*, 838 P.2d at 1158–59.

⁶⁹ *Hendricks*, 184 P.3d at 685.

⁷⁰ *Id.*

Loss of Consortium

Hendricks next asserted a claim for loss of consortium on behalf of Ryan's siblings.⁷¹ The court held that if the injured party fails to establish the defendant's liability for his or her claim, the loss of consortium claim must fail also.⁷² Hendricks could not establish the Hurleys' liability for Ryan's underlying negligence claim, and therefore, the district court dismissed the claim for loss of consortium and the Supreme Court of Wyoming affirmed.⁷³

Premises Liability

Hendricks's third claim regarding premises liability contained two arguments.⁷⁴ First, Hendricks argued the defendants, as homeowners and possessors of the premises, had a duty to inspect their property to ensure its safety.⁷⁵ Next, Hendricks argued the Hurleys breached their duty of reasonable care under the circumstances because evidence indicated the well and hydrant created an unsafe condition.⁷⁶ That evidence, she argued, consisted of the close proximity of the water hydrant and the well pedestal, the polarity of the electrical system, and visible electrical connections.⁷⁷ Hendricks noted that although the Hurleys believed their home inspection when purchasing the home included the well, the inspection report indicated otherwise.⁷⁸

In response, the court found a possessor of land has an affirmative duty to protect visitors against dangers known to him and dangers discoverable with the exercise of reasonable care, but must only use ordinary care to keep the premises in a safe condition.⁷⁹ The court ruled that the evidence presented regarding the well and hydrant, wiring issues, and the inspection report, when viewed in the

⁷¹ *Id.* at 681.

⁷² *Id.*

⁷³ *Id.* at 687; *see infra* notes 77–83 and accompanying text (discussing the court's evaluation of Hendricks's underlying negligence claim).

⁷⁴ *Hendricks*, 184 P.3d at 687.

⁷⁵ Brief of Petitioner, *supra* note 10, at 12. However, as the court pointed out, a 2005 decision already held a duty to inspect one's premises does not exist in Wyoming. *Hendricks*, 184 P.3d at 682 (citing *Landsiedel v. Buffalo Prop., LLC*, 112 P.3d 610, 615 (Wyo. 2005)).

⁷⁶ Brief of Petitioner, *supra* note 10, at 12.

⁷⁷ *Id.* at 17.

⁷⁸ *Id.*

⁷⁹ *Hendricks*, 184 P.3d at 683 (citing *Rhoades v. K-Mart Corp.*, 863 P.2d 626 (Wyo. 1993)). The court uses the term "ordinary care" in the *Hendricks* opinion; however, it uses the term "reasonable care under the circumstances" in other rulings. *See supra* notes 36–37 and accompanying text (stating the usual test for imposing liability on possessors of land when the occupant is a licensee or invitee is reasonable care under the circumstances).

light most favorable to Hendricks, could not establish the Hurleys knew or should have known of any problems with the well wiring before Ryan's injury.⁸⁰

The Hurleys had a duty to investigate the well for problems only if they knew the well created a dangerous condition or would have discovered the danger with the exercise of reasonable care.⁸¹ Hendricks could not offer any facts from which a jury could find the Hurleys had actual or constructive knowledge of the defects.⁸² As the defense noted, the court concluded general or conclusory allegations cannot establish a genuine issue of material fact.⁸³

Negligent Infliction of Emotional Distress

In Hendricks's final claim, she argued she became a witness to her son's death under the requirements for NIED when her husband called from the scene of the accident and described the events to her as medical personnel attempted to revive their son.⁸⁴ As the court noted, Hendricks did not observe the infliction of her son's injuries or the immediate aftermath without material change in his condition or location.⁸⁵ In fact, she did not see him until he was already in the hospital.⁸⁶ Wyoming law clearly states a plaintiff cannot recover for NIED if he or she does not see the victim until after the victim arrives at a hospital.⁸⁷

⁸⁰ *Hendricks*, 184 P.3d at 683. The court noted the home inspector's report, explicitly excluding the well, would not put a reasonable person on notice that the well presented a dangerous condition. *Id.* at 683–84. In addition, it took a professional inspection done after the accident to actually identify the issues with the well. *Id.* at 684. The court also clarified that, in Wyoming, an installer's possible knowledge of defects does not mean *a reasonable person in the occupant's position* should know of the defect. *Id.* at 684 (citing *Goodrich v. Seamands*, 870 P.2d 1061, 1065 (Wyo. 1994)) (emphasis added). Therefore, the Hurleys were not liable for damages even if Hendricks could prove the original installers of the well knew of its improper installation. *Id.*

⁸¹ *Id.* at 683–84.

⁸² *Id.* at 684. Hendricks presented evidence consisting of her own assertions regarding the position of the well and pedestal, the polarity of the electrical systems, and the existence of electric connections in the vicinity. *Id.*

⁸³ Brief of Respondent at 8, *Hendricks v. Hurley*, 184 P.3d 680 (Wyo. 2008) (No. S-007-0178) (citing *Jones v. Schabron*, 113 P.3d 34, 40 (Wyo. 2005)).

⁸⁴ *Hendricks*, 184 P.3d at 685. The claim of NIED allows a parent, spouse, child or sibling to bring forth a claim if he or she observes the infliction of serious bodily harm or death, or its immediate aftermath, without material change in the condition or location of the victim. *Id.* at 686 (citing *Gates*, 719 P.2d at 199).

⁸⁵ *Id.* at 686.

⁸⁶ *Id.*

⁸⁷ *Contreras By & Through Contreras v. Carbon Co. Sch. Dist. # 1*, 843 P.2d 589, 593 (Wyo. 1992).

Hendricks also argued the exception to the general rule requiring observation of the immediate aftermath of the injury, as recognized in *Larsen v. Banner Health System*, should have applied in her case.⁸⁸ The *Larsen* court introduced what it characterized as an “extremely limited” exception.⁸⁹ It held that in the limited circumstances where a person breaches a *contractual relationship for services* that carry with them *deeply emotional responses*, a duty arises to exercise ordinary care to avoid causing emotional harm.⁹⁰ In the case at hand, Hendricks did not claim or attempt to prove a contractual relationship existed between her and the defendants.⁹¹

In sum, the court upheld the district court’s summary judgment order on all counts because Linda Hendricks could not establish the Hurleys’ negligence as premises owners or in supervising her son.⁹² The fire hydrant and well casing pedestal proximity and the visible electrical connections nearby did not demonstrate the Hurleys had information from which they could infer existence of a dangerous condition.⁹³ The court precluded liability for the remaining loss of consortium claim because the law bases liability for this claim on the defendant’s negligence, which Hendricks failed to establish.⁹⁴

ANALYSIS

The Supreme Court of Wyoming properly affirmed the grant of summary judgment on Hendricks’s negligent supervision, loss of consortium, negligent inspection of premises, and negligent infliction of emotional distress claims.⁹⁵ However, the court would have been more persuasive had it evaluated the negligent supervision claim based on the traditional eight-factor test used in Wyoming for assessing the imposition of a duty.⁹⁶ In addition, while the court chose not to

⁸⁸ *Hendricks*, 184 P.3d at 686. In *Larsen*, a hospital switched two babies at birth and one of the mothers and her daughter discovered the switch forty-three years later. *Larsen*, 81 P.3d at 198. The mother and daughter sued the hospital for purely emotional damages stemming from its negligence. *Id.*

⁸⁹ *Larsen*, 81 P.3d at 206.

⁹⁰ *Id.* (emphasis added).

⁹¹ *Hendricks*, 184 P.3d at 686. Hendricks also cited other jurisdictions allowing an exception to the general NIED rule where the nature of the relationship between the parties gives rise to a duty to exercise ordinary care to avoid causing emotional harm. *Id.* (quoting *Lawrence*, 534 N.W.2d at 421 (holding a client cannot recover for emotional distress resulting from negligence of the defendant without showing physical injury)). The court denied this expansion and refused to extend the exception recognized in *Larsen*. *Id.*

⁹² *Id.* at 683–84.

⁹³ *Id.*

⁹⁴ *Id.* at 687.

⁹⁵ See *infra* notes 99–166 and accompanying text.

⁹⁶ See *infra* notes 105–42 and accompanying text.

address the issue of whether a child can claim loss of consortium for a sibling under Wyoming law, previous case law suggests the court may reject this claim if presented with the issue in the future.⁹⁷ Finally, the court properly affirmed the dismissal of Hendricks's premises liability and NIED claim, as Wyoming does not recognize a duty to inspect one's premises and Hendricks did not witness her son's injuries or their immediate aftermath.⁹⁸

Negligent Supervision

The Supreme Court of Wyoming has not recognized a claim for negligent supervision of a minor. Even though other jurisdictions have addressed and recognized this claim, those courts noted the duty is narrow and hinges on whether a reasonable person would have foreseen the type of injury that occurred and taken precautions to avoid such injury.⁹⁹ While the (Second and Third) Restatements of Torts recognize special relationships as imposing a duty to aid or protect, the duty only includes the exercise of reasonable care under the circumstances.¹⁰⁰ The Restatement (Second) of Torts specifically states the defendant is not liable if he neither knows nor should know of an unreasonable risk.¹⁰¹

In addition, Hendricks sought to extend the duty of supervision to someone outside of the child's immediate family (his grandparents).¹⁰² This gave her argument less validity because courts are reluctant to recognize family membership as creating a special relationship carrying with it a heightened standard of care.¹⁰³

⁹⁷ See *infra* notes 143–53 and accompanying text.

⁹⁸ See *infra* notes 154–66 and accompanying text.

⁹⁹ See McPherson, *supra* note 23, at 127–29 (stating the duty to supervise has been said to be a narrow one (citing *Hill v. Herbert Hoover Boys Club*, 990 S.W.2d 19, 22 (Mo. App. E.D. 1999))); *Broadbent v. Broadbent*, 907 P.2d 43, 46–47 (Ariz. 1995) (stating the pertinent inquiry is whether parent acted as reasonable and prudent parent with respect to act or omission that injured his child); *Bang v. Tran*, 1997 Mass. App. Div. 122, 127 (Mass. Dist. Ct. App. Div.) (stating the test is what an ordinarily reasonable and prudent parent would have done in similar circumstances); *A.R.H. v. W.H.S.*, 876 S.W. 2d 687, 689 (Mo. Ct. App. 1994) (holding the duty to supervise is a narrow one and breach turns upon whether a reasonable person would recognize that an incident of the type alleged could occur and that steps should be taken to prevent it. Also, that more vigilance and caution may be required when a child is involved *if there is a potentially dangerous condition of which the supervisor is or should be aware*); *Barrera v. Gen. Elec. Co.*, 378 N.Y.S.2d 239, 241 (N.Y. Sup. Ct. 1975) (holding when one, other than parent, undertakes to control infant, such person becomes responsible for any injury proximately caused by his negligence; such person is required to use reasonable care, as measured by reasonable man standard, to protect infant over whom he has assumed temporary custody and control).

¹⁰⁰ RESTATEMENT (SECOND) OF TORTS § 314A (1965); RESTATEMENT (THIRD) OF TORTS: LIAB. PHYS. HARM § 41 (P.F.D. No. 1, 2005).

¹⁰¹ RESTATEMENT (SECOND) OF TORTS § 314A cmt. e (1965).

¹⁰² *Hendricks v. Hurley*, 184 P.3d 608, 685 (Wyo. 2008).

¹⁰³ RESTATEMENT (THIRD) OF TORTS: LIAB. PHYS. HARM § 40 Reporter's Notes cmt. o (Tentative Draft No. 5, 2007) (citing *Chastain v. Fuqua Indus., Inc.*, 275 S.E.2d 679 (Ga.Ct.App.1980)).

Beyond cases discussing a child's ability to bring a negligent supervision claim against his or her parents, almost no judicial consideration of affirmative duties of other family members to each other exists.¹⁰⁴

In analyzing the issue of whether to impose a duty upon a defendant at common law, the Supreme Court of Wyoming has said duty is an expression of those policy considerations which lead the law to declare the plaintiff is entitled to protection.¹⁰⁵ In Wyoming, when the court considers whether to impose a duty based on a particular relationship, the traditional eight-factor test adopted by the court in *Gates v. Richardson* encompasses the various policy considerations the court balances.¹⁰⁶ This test applies to cases involving premises liability.¹⁰⁷ The Supreme Court of Wyoming has ruled the eight-factor test does not require the existence of a relationship recognized under some specialized theory of law, such as premises liability agency.¹⁰⁸

The *Hendricks* court would have been more persuasive had it applied the eight-factor test in discussing the issue of negligent supervision because the court consistently turns to this test when assessing the imposition of duty.¹⁰⁹ The *Hendricks* court actually cited and discussed several cases in its opinion in which the court applied the traditional eight-factor test.¹¹⁰ However, the court avoided the eight-factor analysis by proclaiming the "usual test" for imposition of a duty in these circumstances is that of reasonable care to avoid injury where it is reasonably foreseeable a failure to use such care may result in injury.¹¹¹

¹⁰⁴ *Id.*

¹⁰⁵ *Duncan v. Afton, Inc.*, 991 P.2d 739, 744–45 (Wyo. 1999); *accord, e.g.*, *Natrona County v. Blake*, 81 P.3d 948, 951 (Wyo. 2003); *Gates v. Richardson*, 719 P.2d 193, 196 (Wyo. 1986).

¹⁰⁶ *Gates*, 719 P.2d at 196 (adopting the eight-factor test in Wyoming) (quoting *Tarasoff v. Regents of U. of Cal.*, 551 P.2d 334, 342 (Cal. 1976)); *accord, e.g.*, *Black v. William Insulation Co.*, 141 P.3d 123, 128 (Wyo. 2006) (stating the court uses the factors adopted in *Gates* when deciding whether to adopt a particular tort duty); *Killian v. Caza Drilling, Inc.*, 131 P.3d 975, 980 (Wyo. 2006) (stating the court uses the factors adopted in *Gates* when deciding whether to adopt a particular tort duty); *Erpelding v. Lisek*, 71 P.3d 754, 758 (Wyo. 2003) (stating, since *Gates*, the court utilizes the eight-factor test which balances factors to determine whether a defendant should owe a duty of care to a plaintiff); *Anderson v. Two Dot Ranch, Inc.*, 49 P.3d 1011, 1025 (Wyo. 2002) (stating in order to conclude the scope encompasses the defendant's actions, the court must consider the factors adopted in *Gates*); *Duncan*, 991 P.2d at 744 (listing the factors in *Gates* when holding it balances numerous factors in considering the imposition of duty based on a particular relationship); *Mostert v. CLB & Assocs.*, 741 P.2d 1090, 1094 (Wyo. 1987) (following the factors adopted in *Gates*).

¹⁰⁷ *Daniels v. Carpenter*, 62 P.3d 555, 563 (Wyo. 2003).

¹⁰⁸ *Id.*

¹⁰⁹ *Gates*, 719 P.2d at 196.

¹¹⁰ *See Daniels*, 62 P.3d at 563 (citing *Duncan*, 991 P.2d at 739; *Goodrich*, 870 P.2d 1061; *Ortega v. Flaim*, 902 P.2d 199 (Wyo. 1995)).

¹¹¹ *Hendricks*, 184 P.3d at 684 (citing *Daniels*, 62 P.3d at 563).

*Application of the Traditional Eight-Factor Test to the Facts in
Hendricks v. Hurley*

The *Hendricks* court found Ryan Hendricks's injury not reasonably foreseeable.¹¹² While the traditional *Gates* test includes foreseeability, it is just one factor among many to be weighed and is not the most important factor.¹¹³ The second factor the court considers in evaluating whether to impose a duty upon a defendant is the closeness of connection between the defendant's conduct and the plaintiff's injury.¹¹⁴ The closer the connection between the defendant's conduct and the plaintiff's injury, the more this factor supports imposing a duty on the defendant.¹¹⁵ In addressing the closeness of connection between the Hurleys' conduct and Ryan's injury, the court may have found the connection too tenuous because Ryan's injury did not result from a directly injurious action, but from the Hurleys' failure to inspect for and repair a latent defect, the danger of which they had no reason to know.¹¹⁶

The third factor the court should have considered is the certainty of injury to the plaintiff.¹¹⁷ If injury to the plaintiff is uncertain or the claim is possibly disingenuous, this factor weighs against imposing a duty on the defendant.¹¹⁸ The degree of certainty that Ryan suffered injury is not at issue in this case, as he died from his injuries inflicted on the Hurleys' land.¹¹⁹

The fourth factor the court should have analyzed is the moral blame attached to the defendant's conduct.¹²⁰ Moral blame arising out of the defendant's actions supports a finding that the defendant had a duty to the plaintiff.¹²¹ If the defendant had direct control over establishing and ensuring proper procedures to avoid the harm or when the defendant is in the best position to prevent injury, the court deems him or her morally blameworthy.¹²² In this case, the Hurleys were not blameworthy, as the well presented a latent danger and there is no evidence

¹¹² *Id.* at 683.

¹¹³ *Duncan*, 991 P.2d at 745. The court has recognized the policy of preventing future harm as one of the most important factors in the eight-factor test. *Id.*

¹¹⁴ *Gates*, 719 P.2d at 196.

¹¹⁵ *See Andersen*, 49 P.3d at 1025; *Duncan*, 991 P.2d at 745.

¹¹⁶ *Hendricks*, 184 P.3d at 683–84.

¹¹⁷ *Gates*, 719 P.2d at 196.

¹¹⁸ *See Killian*, 131 P.3d at 986; *Larsen*, 81 P.3d at 205; *Gates*, 719 P.2d at 196–97.

¹¹⁹ *Hendricks*, 184 P.3d at 681.

¹²⁰ *Gates*, 719 P.2d at 196.

¹²¹ *See Killian*, 131 P.3d at 986; *Erpelding*, 71 P.3d at 759; *Larsen*, 81 P.3d at 205; *Duncan*, 991 P.2d at 745.

¹²² *Killian*, 131 P.3d at 986; *Larsen*, 81 P.3d at 205; *see Duncan*, 991 P.2d at 745.

showing harm could have been prevented if the Hurleys directly supervised Ryan in the yard or if he received more immediate medical assistance.¹²³

The fifth factor the court should have considered is the policy of preventing future harm.¹²⁴ If placing a duty upon a defendant in a certain situation will succeed in preventing future harm, this factor will strongly support imposing a duty upon the defendant.¹²⁵ The court has recognized the policy of preventing future harm as one of the most important factors in the eight-factor test.¹²⁶ In this case, imposing a duty of supervision upon the defendants cannot prevent future harm, as the Hurleys' were unaware of the danger posed by the well, and no evidence exists to show how increased supervision could have prevented the injury.¹²⁷

The sixth factor the court should have examined is the burden a duty places on the defendant.¹²⁸ If the burden on the defendant is not significant, this factor supports finding a duty.¹²⁹ If a duty were imposed in this case, the burden would be significant because it holds supervisors liable even when harm is unforeseeable. A supervisor should not be forced to keep a constant vigil over his or her supervisees and prevent injury from risks the supervisor has no reason to know exist.¹³⁰

The seventh factor the court should have considered is the impact the imposition of a duty would have on the community and the court system.¹³¹ This factor considers the burdens associated with creating a new cause of action and the increase of litigation in courts.¹³² If the burden on the community and the court system is insignificant, this factor supports finding a duty on behalf of the defendant.¹³³

¹²³ *Hendricks*, 184 P.3d at 683, 685.

¹²⁴ *Gates*, 719 P.2d at 196.

¹²⁵ *See Larsen*, 81 P.3d at 205; *Duncan*, 991 P.2d at 745.

¹²⁶ *Duncan*, 991 P.2d at 745.

¹²⁷ *Hendricks*, 184 P.3d at 683–85. In addition, no medical evidence existed to prove that a faster response time on behalf of the Hurleys could have prevented Ryan Hendricks's injury or death. *Id.* at 685.

¹²⁸ *Gates*, 719 P.2d at 196.

¹²⁹ *See Larsen*, 81 P.3d at 205; *Duncan*, 991 P.2d at 745; *Gates*, 719 P.2d at 197.

¹³⁰ *See, e.g., Smith, Etc. v. Archbishop of St. Louis*, 632 S.W.2d 516, 521 (Mo. App. E.D. 1982) (stating the duty to supervise is narrow, the defendant is not an insurer of plaintiff's safety, and is not required to maintain a "constant vigil" over every person under their supervision); *Stewart v. Harvard*, 520 S.E.2d 752, 759 (Ga. 1999) (holding the person caring for a child is not an "insurer of the safety of the child. He is required only to use reasonable care commensurate with the reasonably foreseeable risk of harm." (quoting *Hemphill v. Johnson*, 497 S.E.2d 16, 18 (Ga. 1998))).

¹³¹ *Gates*, 719 P.2d at 196.

¹³² *Larsen*, 81 P.3d at 205; *Duncan*, 991 P.2d at 746.

¹³³ *See Larsen*, 81 P.3d at 206; *Erpelding*, 71 P.3d at 760; *Duncan*, 991 P.2d at 746.

Recognizing a duty to supervise may increase litigation, as a court subjects itself to increased litigation any time it recognizes a new cause of action.¹³⁴ However, as the Supreme Court of Wyoming recognized in *Gates*, an increased chance of litigation should not deter a court from recognizing a duty that allows an innocent plaintiff to recover for a loss suffered.¹³⁵ The court, in imposing a duty under a cause of action for NIED stated, “[i]f the only purpose of our law was to unburden the court system, then we would reach the zenith of judicial achievement simply by closing the district courts to all litigants and allowing all wrongs to come to rest on innocent victims.”¹³⁶ Hence, this factor is not necessarily in the Hurley’s favor.

The final factor the court should have examined in evaluating whether to impose a duty on a defendant is the availability, cost and prevalence of insurance for the risk involved.¹³⁷ If an insurance policy is available to the defendant for the type of risk and is not unreasonably expensive, the factor may support finding a duty.¹³⁸ However, the court rejected insurance arguments as a basis for denying recovery in *Gates v. Richardson*, ruling a person’s liability under law should not change according the availability and cost of liability insurance.¹³⁹

In summary, the Supreme Court of Wyoming considers the sum total of the above factors when analyzing whether to impose a duty upon a defendant at common law.¹⁴⁰ In the present case, the total number of factors against establishing

¹³⁴ *Theama by Bichler v. City of Kenosha*, 344 N.W.2d 513, 521 (Wis. 1984) (“The fear of an increase in litigation has been voiced in almost every instance where the courts have been asked to recognize a new cause of action. . . . As a result, we feel that this argument does not merit any weight.”); see also Note, *The Child’s Right to Sue for Loss of a Parent’s Love, Care and Companionship Caused by Tortious Injury to the Parent*, 56 B.U. L. REV. 722, 732 (1976).

¹³⁵ *Gates*, 719 P.2d at 197; see also *Bevan v. Fix*, 42 P.3d 1013, 1022 (Wyo. 2002) (stating the court again will reject arguments to effectively close the courts to a class of plaintiffs); *Leithead v. Am. Colloid Co.*, 721 P.2d 1059, 1065 (Wyo. 1986) (stating while problems in recognizing a new claim are not to be dismissed lightly, they can be solved without rejecting the action entirely). Rejecting the claim entirely would be the equivalent of “employing a cannon to kill a flea.” *Leithead*, 721 P.2d at 1065 (quoting *Gates*, 719 P.2d at 197 (quoting *Nehring v. Russell*, 582 P.2d 67, 79 (1978))).

¹³⁶ *Gates*, 719 P.2d at 197.

¹³⁷ *Id.* at 196.

¹³⁸ See *Larsen*, 81 P.3d at 206. Conflict exists as to whether claims for negligent supervision fall within the coverage of insurance policies. McPherson, *supra* note 23, at 131–33. Therefore, this factor may weigh in favor of the Hurleys, as the Restatement (Third) of Torts notes the unavailability of liability insurance in this area. RESTATEMENT (THIRD) OF TORTS: LIAB. PHYS. HARM § 40 Reporter’s Notes cmt. o (Tentative Draft No. 5, 2007) (speculating that the unavailability of liability insurance may be inhibiting the doctrinal development in this area).

¹³⁹ See *Gates*, 719 P.2d at 197 (“A person’s liability in our law still remains the same whether or not he has liability insurance; properly, the provision and cost of such insurance varies with potential liability under the law, not the law with the cost of insurance.”).

¹⁴⁰ *Duncan*, 991 P.2d at 746; accord, e.g., *Natrona County*, 81 P.3d at 951; *Gates*, 719 P.2d at 196.

a duty, as well as the comparative weight of the factors against establishing a duty, indicates the court should not impose a duty upon the Hurleys for negligent supervision of their grandson.¹⁴¹ A thorough analysis of these factors by the *Hendricks* court would have bolstered the court's ruling, as the court consistently turns to this test when assessing the imposition of duty upon a defendant.¹⁴²

Loss of Consortium

The court correctly upheld the dismissal of Hendricks's second claim, loss of consortium on behalf of Ryan's siblings, because Hendricks failed to prove the underlying claim of negligence, and Wyoming has not recognized a claim of loss of a sibling's consortium.¹⁴³ By asserting the loss of consortium claim on behalf of Ryan's siblings, Hendricks argued for an extension of the current law, which only recognizes claims for spouses or children who suffer the loss of a parent's consortium.¹⁴⁴ The court declined to address the issue and instead based its ruling on Hendricks's failure to prove the underlying claim of negligence.¹⁴⁵

Recent case law suggests a possible trend toward courts accepting this theory of recovery for persons other than parents and spouses.¹⁴⁶ The courts allowing recovery for this claim reject arguments suggesting there can be no "special relationship" between siblings or losses of this type are intangible and too speculative.¹⁴⁷ However, the majority of courts around the country either refuse to address the issue or deny recovery for this cause of action.¹⁴⁸

Courts expressly disallowing this claim hold the governing wrongful death statutes preclude sibling recovery, the injuries in these cases are impermissibly speculative, or the relationship between siblings differs from relationships between spouses or parents and children in ways that preclude recovery.¹⁴⁹ The argument centered on the differing relationships among spouses, parents, and siblings is most valid as to why the Wyoming Supreme Court should not recognize this

¹⁴¹ See *supra* notes 112–39 and accompanying text.

¹⁴² See *supra* note 106 and accompanying text.

¹⁴³ *Hendricks*, 184 P.2d at 683–84; see *supra* notes 29–34 and accompanying text.

¹⁴⁴ Brief of Respondent, *supra* note 83, at 17–18.

¹⁴⁵ *Hendricks*, 184 P.3d at 687.

¹⁴⁶ Trainor, *supra* note 34, Summary.

¹⁴⁷ *Id.* § 4(a) (citing *In re Estate of Finley*, 601 N.E.2d 699 (1992); *Sheahan v. Ne. Ill. Reg'l Commuter R.R. Corp.*, 496 N.E.2d 1179, 1182 (Ill. 1986)).

¹⁴⁸ See *supra* note 34 and accompanying text.

¹⁴⁹ See Trainor, *supra* note 34, § 4(b) (citing *Scalise v. Bristol Hosp.*, 1995 WL 410751 (Conn. Super. Ct. 1995) (not reported); *Solomon v. Harman*, 489 P.2d 236 (Ariz. 1971); *Sheahan*, 496 N.E.2d at 1182).

claim in Wyoming.¹⁵⁰ The law generally does not impose the same duty of care and socially expected companionship on sibling relationships that it does on spousal and parent-child relationships.¹⁵¹ The Supreme Court of Wyoming affirmed this in *Nulle v. Gillette–Campbell County Joint Powers Fire Board*, when it recognized a child's claim for loss of a parent's consortium and held a child's relational interest with a parent is one of unique dependence.¹⁵² In contrast, sibling relationships are not characterized by any unique dependencies, such as the need for socialization or financial dependence.¹⁵³

Premises Liability

With respect to Hendricks's third claim, negligent failure to inspect, Wyoming does not recognize a general duty to inspect one's premises and Hendricks failed to present evidence showing a reasonable person would foresee the well presenting a dangerous condition.¹⁵⁴ The Supreme Court of Wyoming ruled correctly on this issue because an occupant should not have the duty to scour or comb through his premises.¹⁵⁵

When the possessor of land has no knowledge of a defect, and nothing in the appearance or character of the premises indicates the existence of a defect, no reason for an inspection exists and ordinary diligence does not require an inspection prior to a person entering upon the land.¹⁵⁶ To hold differently would

¹⁵⁰ Wyoming's wrongful death statute allows siblings to recover for a child's death; therefore one could not argue loss of a sibling's consortium is limited by the wrongful death law's failure to recognize this relationship. *Wetering v. Eisele*, 682 P.2d 1055, 1062 (Wyo. 1984). Also, the mental and emotional injuries associated with the injury or death of a sibling are arguably not speculative. See *Hopson v. St. Mary's Hosp.*, 408 A.2d 260, 264 (Conn. 1979) ("Although disparagingly referred to as 'sentimental' or 'parasitic' damages, the mental and emotional anguish caused by seeing a healthy, loving, companionable mate turn into a shell of a person is undeniably a real injury.").

¹⁵¹ See *Trainor*, *supra* note 34, § 4(b) (citing *Scalise*, 1995 WL 410751 (Conn. Super. Ct. 1995) (not reported)); *Reagan v. Vaughn*, 804 S.W.2d 463, 465–66 (Tex. 1990) (stating the distinction between the parent-child relationship and the relationship between a child and other relatives is rational and easily applied); *Trainor*, *supra* note 34, § 2(b) (stating the loss between siblings is often characterized in terms of companionship as opposed to dependency).

¹⁵² 797 P.2d 1171, 1175 (Wyo. 1990).

¹⁵³ *Reagan*, 804 S.W.2d at 466 ("While . . . all family members enjoy a mutual interest in consortium, the parent-child relationship is undeniably unique and the wellspring from which other family relationships derive.") (quoting *Villareal v. State*, 774 P.2d 213, 217 (Ariz. 1989)).

¹⁵⁴ *Clarke*, 858 P.2d at 295; *Hendricks*, 184 P.3d at 684.

¹⁵⁵ *Parks v. Rogers*, 825 A.2d 1128, 1131 (N.J. 2003).

¹⁵⁶ *Sisson v. Elliot*, 628 S.E.2d 232, 234 (Ga. 2006) (citing *Howerdd v. Whitaker*, 75 S.E.2d 572 (Ga. 1953)); see also *Clemmons v. Griffin*, 498 S.E.2d 99, 100–01 (Ga. 1998) (holding repairman burned due to improper wiring of air conditioning unit could not hold homeowner liable for negligence of prior contractor in wiring unit); *McCarthy v. Hiers*, 59 S.E.2d 22, 24 (Ga. 1950); *Williamson v. Kidd*, 15 S.E.2d 801, 803 (Ga. 1941); *S. Bell Tel. Co. v. Starnes*, 50 S.E. 343, 344 (Ga. 1905).

force the occupants of land to anticipate the existence of hazards they have no reason to believe exist and, therefore, impose a duty to exercise extraordinary care in order to uncover latent defects.¹⁵⁷

Negligent Infliction of Emotional Distress

The court correctly ruled against Hendricks in her final claim, NIED, as Hendricks did not observe her son's injuries or the immediate aftermath without material change.¹⁵⁸ When discussing the fundamentals of NIED in *Gates*, the court explained that the essence of this tort is the shock caused by the perception of an especially horrendous event.¹⁵⁹ The court stated, "[i]t is more than the shock one suffers when he learns of the death or injury of a child, sibling or parent *over the phone*, from a witness, *or at the hospital*."¹⁶⁰ The claim Linda Hendricks asserted did not meet the requirements of this rule.¹⁶¹

The Supreme Court of Wyoming has often expressed the need to limit claims in this area and cautions that allowing a plaintiff to assert a claim without observing the injuries to the victim, or at least arrive before material change occurs, would open a floodgate of litigation in this area.¹⁶² In addition, the financial burdens placed upon defendants will increase if recovery is more easily attainable.¹⁶³ While the law should provide redress for a plaintiff's suffering, the law should not inflict undue harm upon occupants by imposing unreasonably excessive measures of liability.¹⁶⁴

¹⁵⁷ *Sisson*, 628 S.E.2d at 235 (citing *Armenise v. Adventist Health Sys./Sunbelt*, 466 S.E.2d 58 (Ga. 1995)).

¹⁵⁸ *Hendricks*, 184 P.3d at 686.

¹⁵⁹ *Gates*, 719 P.2d at 199 (quoting *Yandrich v. Radic*, 433 A.2d 459, 461 (Pa. 1981)).

¹⁶⁰ *Id.* (citing John D. Burley, *Dillon Revisited: Toward a Better Paradigm for Bystander Cases*, 43 OHIO ST. L.J. 931, 948 (1982) (emphasis added)).

¹⁶¹ *Hendricks*, 184 P.3d at 686.

¹⁶² *Gates*, 719 P.2d at 197 (stating the burden that most worries the court is the burden that an overbroad liability would impose on the court system). Administrative concerns include the possibility of multiplicity of suits and the burden to the court system due to increased litigation. *Id.*; see also *Larsen*, 81 P.3d at 199, 202. In addition, due to the nature of this cause of action, the court may be burdened with even more potentially fraudulent claims if it recognizes the exception Hendricks asserted. *Gates*, 719 P.2d at 197; see also *Thing v. La Chusa*, 771 P.2d 814, 828 (Cal. 1989) (stating greater certainty and a more reasonable limit on the exposure to liability for negligent conduct is possible by limiting the right to recover for negligently caused emotional distress to plaintiffs who personally and contemporaneously perceive the injury-producing event and its traumatic consequences).

¹⁶³ *Gates*, 719 P.2d at 197 (referring to the district court's concern that such actions will result in a burden to the individual defendant and impose upon the public the unwarranted economic burden of increased insurance premiums, but ruling insurance will help spread the loss); *Ochoa v. Superior Court*, 703 P.2d 1, 6 (Cal. 1985).

¹⁶⁴ *Bischoff v. Kohlrenken*, 449 A.2d 1347, 1349 (N.J. Super. Law Div. 1982) (quoting *Portee v. Jaffee*, 417 A.2d 521, 527 (N.J., 1980)).

Finally, even though the *Hendricks* court discussed the telephone call between Hendricks and her husband, the court did not need to address the issue, because the tort of NIED clearly requires a plaintiff to prove the emotional distress he or she suffers is a result of the defendant's negligence.¹⁶⁵ The court already indicated Hendricks failed to meet her burden in proving the Hurleys knew or had reason to know the well presented a dangerous condition, and this precluded their negligence.¹⁶⁶

CONCLUSION

The Supreme Court of Wyoming, in *Hendricks v. Hurley*, properly affirmed the grant of summary judgment on Hendricks's negligent supervision, loss of consortium, negligent inspection of premises, and negligent infliction of emotional distress claims.¹⁶⁷ However, the court would have been more persuasive in its ruling had it evaluated the negligent supervision claim under the traditional eight-factor test used for assessing the imposition of duty in Wyoming.¹⁶⁸

¹⁶⁵ *Sims v. Gen. Motors Corp.*, 751 P.2d 357, 366 (Wyo. 1988).

¹⁶⁶ *Hendricks*, 184 P.3d at 685.

¹⁶⁷ *See supra* notes 95–166 and accompanying text.

¹⁶⁸ *See supra* notes 105–42 and accompanying text.