

MEGAN YAUKEY, A MINOR, BY HER GUARDIAN, V. CHARLES R. YAUKEY, ET AL, C.P. Franklin County Branch, A.D. 1994-236

*Action in Law-Preliminary objections to a complaint filed alleging that plaintiffs have failed to adequately plead a cause of action because 42 Pa.C.S.A. Section 4581 prohibits evidence of misuse of a child safety restraint system.*

1. Because defendants have not been charged with a violation of 75 Pa.C.S.A. Section 4581, Subsection (e) of that section which prohibits the use of such a violation as evidence in any civil trial does not apply.
2. Subsection (e) only specifically prohibits introduction of nonuse of a child passenger restraint system or safety belt system and nothing specifically refers to the prohibition of evidence of misuse.
3. 75 Pa.C.S.A. Section 4581 was enacted to encourage use of seat belts and child safety restraint systems.
4. Although courts are given the authority to interpret the meanings of laws, they are not authorized to make or modify those laws.
5. Although allowing misuse of a child restraint system into evidence may encourage parents to not use any restraining system, this is an issue for the Legislature to address.
6. It was not the Legislature's intent to do away with every action in negligence regarding child passenger restraint systems when it enacted 75 Pa.C.S.A. Section 4581.
7. The Legislature's intent when it created Subsection (e) of 75 Pa.C.S.A. Section 4581 was to prevent a violation of the section acting as a bar to recovery.
8. When the Legislature disallowed nonuse of such devices as child passenger restraint systems into evidence, they prevented defendants from using such evidence against plaintiffs as a defense.
9. Consequently Subsection (e) of 75 Pa.C.S.A. Section 4581 should also be interpreted as allowing a cause of action to proceed.

*C. Lee Anderson, Esquire, Attorney for Plaintiff*  
*Thomas E. Brenner, Esquire, Attorney for Defendants*

### OPINION AND ORDER

WALKER, P.J., October 12, 1994:

### FINDINGS OF FACT

Plaintiff alleges that on July 4, 1992, defendants Charles R. Yaukey and Beth A. Yaukey placed a minor, Megan Yaukey, in a child's car seat. It is further alleged that although defendants had another car seat available to them which was designed to be used with a child of plaintiff's size and age, they used a car seat which was designed for an older, larger child. Later that day, defendants were involved in an automobile accident in which plaintiff incurred various injuries.

Plaintiff alleges that the injuries which she sustained were a direct result of the defendants placing her in a child car seat which was inappropriate for her age and build and therefore failed to protect her from the impact received in the accident. Plaintiff is not relying on a specific statute, namely the Child Passenger Protection Act, 75 Pa.C.S.A. Section 4581 et seq., as a basis for her cause of action but rather is seeking an action solely in negligence.

### DISCUSSION

The question presented to this court is whether evidence of misuse of a child passenger restraint system is admissible in a civil action alleging negligence. Defendant submits that 42 Pa.C.S.A. Section 4581 applies in this case and therefore evidence of misuse of a child safety restraint system is not admissible. 42 Pa.C.S.A. Section 4581 states in pertinent parts that:

(a)(1) [a]ny person who is operating a passenger car, Class I truck, Class II truck, classic motor vehicle, antique' motor vehicle or motor home and who transports a child under four years of age anywhere in the motor vehicle, including the cargo area, shall fasten such child securely in a child passenger restraint system, as defined in subsection (d).

(d) A child passenger restraint system shall be used as designed by the manufacturer of the system in motor vehicle equipped with seat safety belts and shall meet the Federal Motor Vehicle Safety Standard (49 C.F.R. Section 571.213).

(e) In no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action; *nor shall any jury in a civil action be instructed that any conduct did constitute or could be interpreted by them to constitute a violation of this subchapter*, nor shall failure to use a child passenger restraint system or safety seat belt system be considered as contributory negligence nor shall failure to use such system be admissible as evidence in the trial of any civil action. (emphasis added)

Plaintiff argues that defendants have not been charged with a violation of Subsection (e) and therefore, evidence of misuse is admissible. Plaintiff argues that even if Subsection (e) of 75 Pa.C.S.A. Section 4581 did apply it would not prohibit the admissibility of misuse because misuse is not specifically prohibited.

Defendants have not been charged with a violation of 75 Pa.C.S.A. Section 4581 nor have they been charged with an alleged violation of that section. Therefore, Subsection (e) of that section which prohibits the use of such a violation or an alleged violation as evidence in any civil trial does not apply. Subsection (e) only specifically prohibits introduction of nonuse of a child passenger restraint system or safety seat belt system. Nothing in that subsection specifically refers to prohibiting evidence of misuse.

The parties and this court have researched this area of concern and have found only one case relating to misuse of a seat belt or child safety restraint system in this Commonwealth. *Oliver v. Metrick*, 1 D.&C. 4th 628 (1988) concerns a personal injury action arising out of an alleged misuse of a seat belt. In this case, defendant secured two minor passengers in one front passenger seat secured by only one belt. The court found that the Child Passenger Protection Act, 75 Pa.C.S.A. Section 4581 et seq., although prohibiting nonuse of a child restraint system in any

civil action, only referred to the failure to use a child passenger restraint system and did not prohibit evidence of misuse of a seat belt. Although this case only discusses misuse of a seat belt, this court feels that the rationale behind the *Oliver* court's decision is equally applicable to misuse of a child passenger restraint system.

Defendants feel that by allowing misuse of a child restraint system into evidence parents will be encouraged to not use any restraining system whatsoever. This is an issue for the Legislature to address, not the courts. Although courts are given the authority to interpret the meanings of laws, they are not authorized to make or modify those laws.

Defendant argues that by allowing evidence of misuse, the Legislature's intent when it created 75 Pa.C.S.A. Section 4581 would not be carried out. However, even if this court had found that Subsection (e) of 75 Pa.C.S.A., 4581 did apply to the present situation, this court finds it hard to believe that the intention of the Legislature when adopting this law was to do away with every action in negligence regarding child passenger restraint system.

This court feels that 75 Pa.C.S.A. Section 4581 was enacted to encourage use of seat belts and child safety restraint systems. This court also feels that the Legislature's intent when it created Subsection (e) of that section was to prevent a violation of the section acting as a bar to recovery. By disallowing nonuse of such devices into evidence, defendant cannot use such evidence against the plaintiff as a defense. Therefore, this court interprets subsection (e) as allowing a cause of action in negligent misuse be maintained.

## CONCLUSION

Because defendants have not been charged with a violation or an alleged violation of 75 Pa.C.S.A. Section 4581, subsection (e) of that section prohibiting the admissibility of certain violations of that section does not apply. Even had subsection (e) been

applicable, this court finds that evidence of misuse would be admissible because evidence of misuse is not specifically prohibited. Therefore, this court finds that plaintiff had adequately pleaded the cause of action.

#### **ORDER OF COURT**

October 12, 1994, the defendants' preliminary objections to plaintiff's complaint are dismissed.

**REMEMBER!!!**

Now is the time to place  
"New" Subscriptions & Commercial Ads

See the Managing Editor