

Case Briefing in VERY generic terms

Case briefs¹ are summaries that lawyers and law students create of judicial opinions. Because case briefs are self-created tools to help manage an immense amount of information there is no single “correct” way to brief a case. But good case briefs do have a few attributes in common and answer most of the questions below with the appropriate degree of specificity.

1. Identify the case that is being briefed.
 - This is usually called the *case name & citation* and makes it easier to find when you need to relocate your synopsis three or four weeks down the road to begin outlining.
2. What happened between the parties before the lawyers got involved?
 - This section is frequently referred to as the *Facts* section.
3. What has happened since the lawyers or the court system were added?
 - This section is dealing with the progress of the case as it has gone through the court system, so it is the *Procedural History*.
4. What portion of the dispute is the court trying to settle?
 - There is a winnowing effect as a case advances from trial court to appellate court and from appellate court to court of last resort, so the published opinion is usually focusing on how the law suggests a few small pieces of the dispute should be decided. These questions are the *issues* the court is trying to resolve.
5. What materials does the court rely on to structure its answer?
 - You will learn a great deal more about how to answer this question over the next year. Courts have to see how a dispute has been settled before and explain why the current dispute is similar to or different from the settled dispute (the technical name for the concept is stare decisis). This section of the brief is the *sources of authority*. Did the court rely on primary sources such as the constitution, jurisdictional statutes, or binding cases? Did the court rely on secondary sources such as treatises, restatements and model laws, statutes from other jurisdictions, or nonbinding cases?
6. What rule does the court state applies to the dispute?
7. How does the court settle the dispute and create guidance for future disputes in the same vein?
 - *Holding*
8. How did the court get from the problem to that result?
 - *Reasoning*
9. Who won, and what do they get for the “prize”?
 - *Disposition*

¹ Not to be confused with court briefs, i.e., documents lawyers prepare to demonstrate to the court why the law and facts indicate their client should prevail in a dispute. “Brief” is a misnomer for some of these documents since they can run dozens of pages, but I guess that is still more brief than the court having to wade through the law library and evidentiary record for itself.

Some cases have multiple opinions published alongside the holding of the court, some are concurrences and some are dissents. You have the option of independently briefing the other opinions using the case brief form above for each opinion, or adding a couple of sections and sentences for each opinion. Whichever seems easiest to you is the one to start with, and then once you sit through a couple of class sessions and know what your professor tends to emphasize, you can tweak accordingly.

10. Concurrence (if applicable)

11. Dissent (if applicable)

Once you begin reading cases within the context of a particular class, or client representation, it may be beneficial to add the following sections to your case briefs since many situations require reading multiple cases to glean all pieces of the applicable rules to solving a problem.

12. How does this case relate to the others I have read dealing with this issue?

13. What lingering questions do I have about the case?

14. Miscellany

In the pages that follow I have provided a judicial opinion and a model case brief. This opinion does not contain a separate concurrence or dissent, so those sections are not included in the example brief.

BAXTER v. FUGETT
1967 OK 72
425 P.2d 462
Case Number: 41262
Decided: 03/21/1967
Supreme Court of Oklahoma

Cite as: 1967 OK 72, 425 P.2d 462

ROBERT BAXTER, A MINOR, BY AND THROUGH FRED A. BAXTER, HIS MOTHER AND
NEXT
FRIEND, AND FRED A. BAXTER, INDIVIDUALLY, PLAINTIFFS IN ERROR,
v.
OCIE FUGETT, AS GUARDIAN AD LITEM OF WILLIAM M. FUGETT, AND OCIE FUGETT,
INDIVIDUALLY, DEFENDANTS IN ERROR.

Syllabus by the Court

¶0 In the operation of an automobile, a minor is required to exercise the same standard of care as an adult.

Appeal from the District Court of Oklahoma County; W.R. Wallace, Judge.

Action by plaintiffs, Robert Baxter, a minor, by and through his mother and next friend, Freda B. Baxter, and Freda B. Baxter individually, against the defendants, Ocie Fugett as Guardian Ad Litem of William M. Fugett, a minor, and Ocie Fugett individually, for damages for negligence. From verdict and judgment for defendants, plaintiffs appeal. Reversed and remanded to trial court for new trial.

Berry & Berry, Howard K. Berry, Jr., Oklahoma City, for plaintiffs in error.

Jake Hunt, Oklahoma City, for defendants in error.

McINERNEY, Justice.

¶1 This is an appeal by plaintiff from verdict and judgment for defendant in a negligence action arising out of a collision, at an Oklahoma City street intersection, between a bicycle ridden by a 12 year old plaintiff and an automobile driven by a 16 year old defendant. The mothers of the two boys were made parties plaintiff and defendant respectively, but in view of the single proposition argued on appeal, it will not be necessary to notice their respective interests in the case.

¶2 In the petition, the 16 year old defendant was charged with specific acts of negligence; in the answer, defendant pleaded contributory negligence, unavoidable accident, and the defense of sudden emergency.

¶3 No detailed summary of the evidence is necessary to an understanding of the single question raised on appeal. Plaintiff was riding his bicycle north on a through street. He could not recall any facts pertaining to the cause of the accident. Defendant testified, as a witness for plaintiff, that he was driving his automobile west toward an intersection where the through street was protected by a stop sign. After stopping and observing plaintiff about fifty feet away, defendant proceeded into the intersection and his automobile was struck at a point just behind the driver's seat on the left side by plaintiff's bicycle.

¶4 In his "statement of the case and pleadings" the trial judge informed the jury that plaintiff alleged that the defendant automobile driver was negligent in two particulars: (1) failure to keep a proper lookout, and (2) failure to yield the right of way. From the language in the petition, and from uncontradicted circumstances shown in evidence, it is clear that the allegation of failure to yield the right of way was based upon the requirement of [47 O.S. 1961 § 11-403 \(b\)](#) that "every driver" approaching an intersection protected by a stop sign shall stop, and "after having stopped shall yield the right of way to any vehicle which * * * is approaching so closely on said highway as to constitute an immediate hazard". The trial judge also told the jury, among other things, that the defendant alleged that the 12 year old plaintiff was guilty of contributory negligence. No objection to the court's statement of the issues and pleadings was made by either party.

¶5 From verdict and judgment for defendant, plaintiff appeals.

¶6 The precise argument made on appeal, and the only one, is that the court erred in giving the following instruction:

"You are instructed that the plaintiff Robert Baxter at the time of this accident was 12 years of age and the defendant William M. Fugett was 16 years of age. In determining whether or not the defendant William M. Fugett was guilty of negligence and whether or not the plaintiff Robert Baxter was guilty of contributory negligence as heretofore defined in these instructions, you are instructed that by the term 'ordinary care' as applied to children is meant that degree of care and caution which would usually and ordinarily be exercised by children of the age of 12 and 16 years under the same or similar circumstances. The conduct of children 12 years of age and 16 years of age is not necessarily to be judged by the same rules which would apply to an adult. The degree of care and caution required of a child is according to and commensurate with his age and mental capacity and his power to exercise such degree of care as a child of his age may be fairly presumed capable of exercising. Insofar as Robert Baxter and William M. Fugett may be presumed to do so it was their duty to take into consideration the fact that each was attempting to cross a public street upon which vehicular traffic could ordinarily be expected and in crossing the street to exercise ordinary care for his own safety and to watch out for traffic proceeding along the street. "It was the duty of each to take into consideration all the circumstances and conditions surrounding the place of the accident and the possibility of injury which might result in crossing or attempting to cross the street at the time and place in question."

¶7 This instruction follows the general rule that when a minor is charged with common law negligence, his conduct is to be measured by a "child's standard of care" under which consideration is given to his

age, mental capacity, judgment, etc. *Davis v. Bailey*, 162 Okl. 86, [19 P.2d 147](#); *Witt v. Houston*, 207 Okl. 25, [246 P.2d 753](#); *Morris v. White*, 177 Okl. 489, [60 P.2d 1031](#); *Bready v. Tipton*, Okl., [407 P.2d 194](#). These cases, however, involve the standard of care required of a child while engaged in activities commensurate with his age.

¶8 We are asked to approve the above standard of care for a 16 year old minor engaged in an adult activity. We decline to do so. The better reasoning is expressed in *Dellwo v. Pearson*, 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 866. The Minnesota Supreme Court, in disapproving a similar instruction, and distinguishing between the contributory negligence and primary negligence of minors, said as follows:

"However, this court has previously recognized that there may be a difference between the standard of care that is required of a child in protecting himself against hazards and the standard that may be applicable when these activities expose others to hazards."
(Emphasis supplied)

¶9 The instruction complained of permits a minor to engage in adult activities which expose others to hazards, while imposing only a child's standard of care on the minor so engaged. This legal sanction is impractical and contrary to the circumstances of modern life. We hold that a minor, when operating an automobile, must exercise the same standard of care as an adult. Jurisdictions surrounding Oklahoma generally follow the rule announced in this case. See *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868; *Allen v. Ellis*, 191 Kan. 311, [380 P.2d 408](#); *Wilson v. Shumate*, Mo., 296 S.W.2d 72; *Renegar v. Cramer*, Tex.Civ.App., 354 S.W.2d 663.

¶10 The Highway Safety Code, Title 47, Motor Vehicles, makes no distinction between minors and adults in defining "person", § 1-144, "driver", § 1-114, and "operator", § 1-140. No statute or rule of the road prescribing the operation of a motor vehicle makes any such distinction, but refers to "every person", when reference is made to the person, operating a vehicle and the duties required in the operation of a vehicle. It is the announced legislative policy of this state to prescribe only one standard of care upon a person operating a motor vehicle, regardless of the age of the person, and that is an adult standard of care. There is no reason to apply a different standard of care to negligent acts committed by a minor while driving an automobile, even though the negligent act is not a specific violation of a statute, since the activity of operating a motor vehicle on a public highway is the basis for imposing the standard of care, rather than the age of the person, and that is an adult standard

¶11 Having determined that the giving of the instruction was error, and being of the opinion that this error was prejudicial to the plaintiff, the judgment of the trial court is reversed and the cause is remanded with directions to grant a new trial.

¶12 JACKSON, C.J., IRWIN, V.C.J., and WILLIAMS, BLACKBIRD, BERRY, HODGES and LAVENDER, JJ., concur.

Leave ample margins to
come back and jot
corrective notes and hypos
during class

BAXTER v. FUGETT
425 P.2d 462 (1967 Okla.)

Facts

16 year-old driver Fugett approached an intersection controlled by a stop sign. He stopped, checked that he was clear to proceed, and observing a bicycle about 50 feet away approaching the intersection from his left, entered the intersection. The bicycle, ridden by 12 year-old Baxter, struck Fugett's automobile just behind the driver's seat.

Procedural History

Baxter's mom sued the Fugetts under a negligence theory. The case proceeded in a jury trial and the jury found for the defendant (Fugetts). The case is now being appealed because of an incorrect statement of law in the jury instructions.

Issue, Holding, & Reasoning are areas where it is easy to make beginner's mistakes, so build in extra space to write in professor's corrections during class

Issue

Whether a minor's alleged negligence in operating a motor vehicle should be determined using a child's standard of care or an adult's standard of care.

Sources of Authority²

The court used the motor vehicle code (a statute) to determine the standard of care that applies to the persons operating motor vehicles regardless of their age. It then further supported its determination with a case from Minnesota and supporting cases from the surrounding jurisdictions, Texas, Arkansas, Missouri, and Kansas.

Holding

A minor operating a motor vehicle must use the same standard of care as an adult operating a motor vehicle.

Reasoning

Because minors operating motor vehicles are placing others besides themselves at risk they must seek to avoid harming others and the easiest way to accomplish that is by making them rise to the occasion and use an adult's standard of care.

Disposition

Cyclist Baxter (plaintiff) wins and his prize is a new trial.

² This section is important as you're working through and internalizing what kinds of authority are binding and what kinds are merely persuasive, later on you'll probably discard it