

CASE BRIEF

Citation:	<i>Kostecky v. Henry</i> , 113 Cal. App. 3d 362 (1980)
Parties:	CONSTANCE MARIE KOSTECKY, Plaintiff and Respondent, v. DAVID MATHEW HENRY, Defendant and Appellant, ROBERT HENRY, Defendant and Appellant
Facts:	David Henry, 15 year old minor learning driver accompanied and supervised by father, Robert Henry, was traveling northbound on Grove Street in the City of Ontario. Plaintiff was traveling southbound. Defendant made a left turn on a green light at the intersection of Grove and Fourth into oncoming traffic causing a collision with Plaintiff. The plaintiff, a minor child, sustained a brain injury and trauma to the eye.
Procedural History:	The Plaintiff, Constance Kostecky, brought the suit against Henry on behalf her her minor child as guardian ad litem. At close of defendant's case, plaintiff's motion for directed verdict as to Defendant, David Henry's liability was granted and the jury was instructed accordingly. The jury made a special finding that Robert Henry failed to fulfill his duties under Cal. Veh. Code § 12509 and that failure was the proximate cause of the collision. The trial court entered judgment for the plaintiff. Defendants appealed and argued that there were errors in jury instructions, improper directed verdict, excessive damages, and misconduct by Plaintiff's counsel.
Issue:	Can a supervising licensed driver be held liable for a vehicle collision caused by a permitted minor under Cal. Veh. Code § 12509?
Holding:	The 4th District Court of Appeal affirmed that the supervising licensed driver may be held liable for negligent supervision and the minor driver's liability was properly determined at trial. The Court also held that Cal. Veh. Code § 12509 establishes a duty to supervise exists but no statutory requirements beyond positioning and instead, liability was determined by ordinary negligence standards and common law standards of reasonable care. Applying that standard, the father's failure to observe the oncoming vehicle and perceive the hazard in time to warn the permitted driver about the oncoming vehicle supported liability.

Comments:	<p>This case also cites another case (<i>Roberts v. Craig</i> (1954) 124 Cal.App.2d 202, 208 [268 P.2d 500, 43 A.L.R.2d 1146]) arguing the conduct of the licensed driver was the common law duty of due care; that is, what a reasonably prudent instructor would have done under the same or similar circumstances.</p> <p>Together, <i>Roberts v Craig</i>, <i>Kostecky v. Henry</i> and <i>Ca. Veh. Code § 12509</i>, establishes that a supervising licensed driver owes a duty of reasonable care and liability arises for negligence in supervising a permitted minor driver under ordinary negligence principles.</p> <p>The facts of <i>Kostecky v. Henry</i>, align with the facts of our case in question. Farley is a permitted driver who made a left turn on a green light into oncoming traffic and caused a collision while under the supervision of a licensed supervising driver.</p> <p>This fact pattern aligns more closely with ours than the <i>Roberts v. Craig</i>, which involved a licensed passenger seeking damages from the permitted driver. The driver argued that negligence was imputable to the passenger and the Court held that it was not imputable as a matter of law.</p>
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