

IN THE SUPERIOR COURT OF GEORGIA
COUNTY OF DEKALB

TELITA TODD,	:
	:
Plaintiff,	:
v.	: CIVIL ACTION NO. 17CV2721-3
	:
ANTHONY TODD aka ISAIAH	:
ANTHONY TODD, PATRICK	:
CLEVELAND, and JOHN DOE,	:
	:
Defendant.	:

**ORDER GRANTING DEFENDANT, ISAIAH ANTHONY TODD’S MOTION TO
DISMISS UNDER THE FAMILY IMMUNITY DOCTRINE**

Isaiah Anthony Todd has filed a motion to dismiss the claim made against him by plaintiff, his mother, asserting that he is entitled to immunity under the Family Immunity Doctrine for any claims his mother may have against him in this car accident case. Plaintiff has filed a response, but has failed cite a single case to support denying Todd’s motion to dismiss. Defendant Patrick Cleveland has filed a notice of intent to assign fault to Todd, and Plaintiff filed a response stating she intends to ask the jury to find Todd, Patrick Cleveland, and John Doe jointly and severally liable to Plaintiff as joint tortfeasors.

Standard of Review

A motion to dismiss for failure to state a claim should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the

claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.¹

When deciding a motion to dismiss, this Court must construe all pleadings most favorably to the plaintiff,² and the “plaintiff need not set forth all elements of a cause of action in order to state a claim.”³ This Court may consider the exhibits attached to the pleadings and incorporated into the complaint.⁴

Family Immunity Doctrine

The Family Immunity Doctrine that was enacted under the premise of protecting family members from tort actions brought by other family members. “Public policy reasons which support the parental or family immunity include: (1) disturbance of domestic tranquility, (2) danger of fraud and collusion, (3) depletion of the family exchequer, (4) the possibility of inheritance, by the parent, of the amount recovered in damages by the child, and (5) interference with parental care, discipline and control.”⁵

¹ *Stewart v. SunTrust Mortgage, Inc.*, 331 Ga. App. 635 (2015)(quoting *Stendahl v. Cobb County*, 284 Ga. 525 (2008)).

² *Babalola v. HSBC Bank, USA, N.A.*, 324 Ga. App. 750 (2013).

³ *Stewart*, 331 Ga. App. at 636.

⁴ *Babalola*, 324 Ga. App. 750 (2013) (citing *Gold Creek SL v. City of Dawsonville*, 290 Ga. App. 807, 809 (2008)); *Hendon Properties, LLC v. Cinema Development, LLC*, 275 Ga. App. 434 (2005) (“[A] trial court may properly consider exhibits attached to and incorporated in the pleadings in considering a motion to dismiss for failure to state a claim for relief.”) (citing *Bakhtiarnjad v. Cox Enterprises*, 247 Ga. App. 205, 208 (2000) (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.” In considering a motion to dismiss for failure to state a claim for which relief can be granted, a trial court may properly consider exhibits attached to and incorporated into the pleadings.”)).

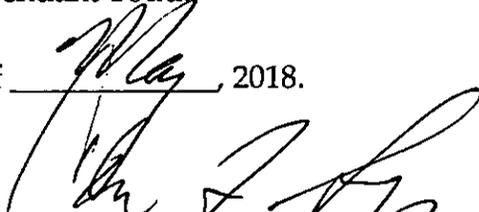
⁵ *Clabough v. Rachwal*, 176 Ga. App. 212 (1985); *Coleman v. Coleman*, 157 Ga. App. 533 (1981).

Where this immunity applies, the insurer is under no duty to pay for the liability of a family member to another family member since immunity in such case bars suit against a family member.⁶ The family member exclusion may not be upheld where such exclusion may either prejudice the innocent members of the motoring public or create unfair exposure of the insured to unanticipated liability. Plaintiff has presented nothing to this Court that would show the family member exclusion should not apply here and the facts presented support the applicability of the exclusion.

Here, Defendant Todd is the unemancipated son of Plaintiff, resides in the same household as Plaintiff, and is supported financially by Plaintiff. Todd was operating a vehicle owned by Plaintiff when they were involved in an automobile accident in which Plaintiff claims she was injured. As far as this Court is aware no other claims exist against Todd due to this accident, except the claims set forth by Plaintiff or those related to her injuries.

Thus, after considering the motion, the pleadings, and the law, this Court hereby GRANTS defendant's motion to dismiss Defendant Todd.

SO ORDERED this 2 day of May, 2018.


CLARENCE F. SEELIGER, Judge
DeKalb Superior Court
Stone Mountain Judicial District

⁶ *Coleman v. Coleman*, 157 Ga. App. 533 (1981)(unemancipated minor may not sue parent for injuries arising from a negligent act); *Blake v. Blake*, 235 Ga. App. 38, 39 (1998).