

# Holiday park not to blame for toddler's death as "accidents may happen"

A HOLIDAY PARK was not to blame for the death of a two-year-old boy who drowned in a pond in Wales, the Court of Appeal has ruled.

The parents of Matthew Marsden had been awarded £25,000 at Wrexham County Court, after Bourne Leisure was held to have breached its duty of care by not giving them specific warnings about lakes and ponds near their caravan as required by the Occupier's Liability Act 1957.

However, delivering judgment in *Bourne Leisure v Marsden* [2009] EWCA Civ 671, Lord Justice Moses said the family were issued with a welcome pack, including a plan.

"The plan showed a number of sources of danger to unaccompanied children on site, in particular a number of roads, lakes, ponds, the river and the beach, just outside the site leading to the sea."

He went on: "Of course, the defendant ought reasonably to have anticipated that small children might escape the attention of parents and wander into places of danger. But it by no means follows that the occupier is under a duty to take precautions against such dangers.

"If the danger is not obvious and the occupier ought to have foreseen that children may play in the area of the danger he may have to take precautions. But that situation is quite different from circumstances in which the source of danger is obvious should a small child stray from the control of even the most attentive and conscientious parent.

"Sometimes these cases are bedevilled with the quest for attaching blame either to the parent or to the occupier. The occupier, it is suggested, ought to have foreseen that there will be unaccompanied small children on its site and taken precautions; faced with that accusation, the occupier blames the parent for losing control over the child.

"But liability is not to be attributed on the basis that one or other must be to blame. In order to escape liability the occupier is not required to prove that the parent was at fault."

Lord Justice Moses said that, following an incident in 2003 where a four-year-old boy had to be rescued from the pond, the holiday park, having consulted the local council, surrounded it with a two-foot fence with wire mesh below the rails.



Scott: "Sea shift" towards reasonableness

"In the instant case it is absurd and offensive to suggest that Mr and Mrs Marsden were in any way at fault," he said.

"A child may be gone in an instant. But it does not follow from the fact that they were not at fault that the defendant was in breach of its duty."

Lord Justice Moses said there was no foundation for the judge to identify a breach of duty by Bourne Leisure or for the conclusion that the breach caused or contributed to Matthew's death.

Lord Justice Stanley Burnton added: "A drowning such as this is a parent's nightmare. But accidents may and do happen to young children without anyone being at fault." Lord Justice Elias agreed.

David Scott, head of travel and leisure at Hill Dickinson in Liverpool, acted for Bourne Leisure.

"This was a really, really tragic case but at no stage did we make any allegations against the parents. Parental supervision was not an issue."

Scott said the interpretation of "reasonable care" in the Occupier's Liability Act was going through an interesting phase.

"I think we are seeing a sea shift at Court of Appeal towards genuine reasonableness but unfortunately you need to get there to get the correct interpretation," he said.

"First instance decisions are a little varied and set too high a standard."