

Op-Ed/Editorials: Do Parents Have A Duty To Keep Their Kids Out Of Casinos?

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When a gaming operator loses its license because parents let their underage children gamble, can the operator sue the parents?

The Court of Appeal of Louisiana recently was faced with this question. As this is being written, the Court's opinion is not yet final. And, although the facts of the case are somewhat in dispute, the basic legal issues are clear.

On January 11, 1994, Sandi and Toni Dixon, guardians of four-year-old Candace, brought the little one with them into the Chelsea Street Pub in the Pecanland Mall in Ouachita Parish, Louisiana. The restaurant had a separate section for its video poker machines. Signs warned that minors were not allowed to enter this gaming room.

Two state troopers were also in the Pub, having lunch. One testified that he saw Toni take Candace into the video poker room. Toni put coins into the machine, then showed the child, sitting on her lap, how to touch the screen to play the game.

The Video Gaming Division of the Office of State Police issued a citation to the Pub owner, Carver, Inc., and petitioned to revoke its gaming license.

Now, pulling a license worth hundreds of thousands of dollars because one four-year-old touched a video poker screen may seem a bit extreme. But the Louisiana Legislature's Video Draw Poker Devices Control Law stated, at the time:

A. No person licensed... or any agent or employee thereof, shall allow a person under the age of eighteen to play or operate a video draw poker device at a licensed establishment.

B. The Division shall revoke the license of any person... who is found by the

Division to have committed or allowed a violation of Subsection A.

The Division had the power to issue fines when other violations occurred. But it could impose only one penalty, license revocation, when it came to minors gambling.

The Legislature later realized this penalty was awfully harsh. But rather than give the Division more discretion, the Legislature changed the law to read: "A. No person... shall intentionally allow a person under the age of eighteen..."

The Pub's lawyer argued that the Legislature merely was clarifying the prior law; that a license could only be revoked if the Division proved the Pub intentionally allowed little Candace to play video poker.

The Louisiana Court of Appeal should have said the reason for the change is obvious: The Legislature felt it would be unfair to revoke a license when an operator was merely careless in letting minors gamble.

Instead, in a poorly reasoned opinion, the Court held that the only intent required is what is known as "general criminal intent."

"General criminal intent" actually has nothing to do with true intent. It is a legal fiction, created to prevent an intoxicated defendant from claiming that he was so drunk that he did not know what he was doing.

For the Court to say that the word "intentionally" in a statute means "general criminal intent" means someone can "intentionally" do something that he does not even know he is doing. In other words, the operator's actual knowledge or intent is irrelevant.

The Pub's lawyer pointed out that the four-year-old was not really playing the game. But the Court held the law "includes all minors regardless of their cognitive abilities."

Having lost the battle, and its license, the Pub's owner tried to salvage some of its business by finding someone else to take the blame. It probably realized that it could not sue its own employees for letting the child into the gaming area. It did try to sue the State Police Video Gaming Division, but that, naturally, went nowhere.

Carver, Inc., hired a new lawyer, George E. Lucas, Jr., who decided to sue Sandi and Toni Dixon, the pair responsible for bringing in the four-year-old. Lucas knew

that most individuals do not have enough money to make a lawsuit like this worthwhile. But he also knew that homeowners' insurance often covers claims having nothing to do with houses. So, he added Louisiana Farm Bureau Casualty Insurance Company as a defendant. The lawsuit sought damages for the loss of the gaming license "and the substantial revenue generated thereby."

Both the trial court and Court of Appeal took the claim seriously, though they both agreed the lawsuit had to be dismissed.

It may seem farfetched that these adults might have to pay for all of the Pub's lost profits. But they did cause the Pub to lose its valuable video poker license.

Fortunately for the Dixons, causation alone is not enough.

The Pub alleged that the Dixons were negligent in letting a child play video poker. Legally, a claim of negligence can only be brought if the defendant owed a duty to the injured plaintiff.

The Court of Appeal analyzed the "moral, social and economic factors, including the fairness of imposing liability." Looking at the history and purpose of the statute and regulations it came to the inevitable conclusion: The duty to keep children out of the gaming area rests ultimately with the licensee.

Parents may have a moral duty to keep their young ones away from gambling. But they owe no legal duty to gaming operators.

In the end, it all came down to money: It is the operator who would make more money if it allowed minors to gamble, so it is the operator who bears the risk.