

Civil Wrongs and the Rights Revolution
Placek v. City of Sterling Heights (1979)
405 Mich. 638

The case *Placek v. Sterling Heights* involved a car accident in which the plaintiff, Patricia Placek, while passing a car that was turning right at a four-way intersection, struck a police car on an emergency run that had driven through a stop sign. In the lower court and the Court of Appeals, both the plaintiff and defendant had been found partially liable for the accident. The driver with the right of way, Placek, is not fully absolved of their duty to drive with due care and caution, and the police officer, though permitted to speed and ignore other traffic laws while on an emergency run, retains the duty to drive with due regard for the safety of others.

This finding resulted in the dismissal of the case, based on the common law doctrine of “contributory negligence” which holds that an action for damages may not be rewarded if both parties to an accident are at fault. On further appeal, the case went to the Michigan Supreme Court where the court unanimously decided to replace the doctrine of contributory negligence with that of “comparative” negligence, which dictates that the fault of both parties may be weighed to determine who was at greater fault; thus, under the new doctrine, Placek could be found deserving of pecuniary compensation, even though she was partly at fault for causing the accident.

At the time of the *Placek* case, 32 U.S. states had already rejected contributory negligence for some form of comparative negligence. It was a commonly held opinion that contributory negligence was a cause of much injustice in the courts, and in a previous case *Kirby v. Larson*, 400 Mich. 585, three of six Michigan Supreme Court Justices had voted in favor of a new doctrine of comparative negligence. The other Justices thought that *Kirby* was not an appropriate vehicle for the new doctrine, but in *Placek* all agreed that it was time to get rid of contributory negligence.

The legacy of *Placek* is that it ushered in a new doctrine in deciding cases of negligence and fault. The Court also decided unanimously that the trial court’s jury instruction in the case was made in error because it was too harsh on the plaintiff and did not account fully for her expectation that cars on the other street would follow traffic laws. They also decided that under the new doctrine, the negligence of the defendant would be presented as a question of fact to be decided by the jury, and the case was remanded for a new trial.

A final issue in *Placek* was whether the new doctrine of comparative negligence would be applied retroactively, to currently pending cases, or prospectively only. On this, the court was split 4 – 3 in favor of retroactive action. Applying precedent retroactively is thought to better secure justice for those in court at the time of the decision, but three Justices believed that it would strain the lower courts that had to apply it, and also that it unfairly benefited plaintiffs who had gambled on the result of *Placek* and brought their cases to court, despite having no claims under the old doctrine of contributory negligence.