

STATE OF MINNESOTA
IN COURT OF APPEALS
 Nos.: A08-1695 and A08-1702

Randy A. Vee and Joyce L. Vee,

Plaintiffs-Appellants,

vs.

Badri Abas Ibrahim, Freightways Corporation,

Defendants,

Ernest Meyer Crouzer, Northern Plains Dairy, LLP,

Defendants-Appellants (File A08-1702),

and

American President Lines, Ltd.,

Defendant-Respondent.

APPELLANT VEES' REPLY BRIEF

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SUMMARY OF ARGUMENT

Respondent American President Lines, Ltd. (“APL”) - - the “owner”¹ of the trailer being towed in this semi truck-motorcycle collision - - has argued in its brief that:

(1) The statute at issue was properly construed by the district court as unambiguous. APL is allegedly not vicariously liable under the financial responsibility act currently codified at § 169.09, subd. 5a, because vicarious liability is imposed only on owners of “motor vehicles” and a trailer is not expressly defined as a “motor vehicle” in the financial responsibility act or chapter 169 where it now resides and this silence should be viewed as an unambiguous rejection of trailers as motor vehicles;

(2) External aids are not allowed in legislative interpretation of an unambiguous statute. Legislative history and judicial interpretations are allegedly inapplicable to the issues before this court because the financial responsibility act itself is “unambiguous” and external interpretive aids are only allowed in the presence of an ambiguity;

(3) External aid supports APL’s argument. If external aids are considered, some of them allegedly support the construction of the law urged by APL, and;

(4) Federal laws are irrelevant. Federal insurance requirements are allegedly irrelevant to APL’s vicarious liability.

In his principal brief, Appellant Vee had argued:

(1) A towed trailer may or may not be a “motor vehicle,” so the act has an ambiguity. While a truck is a “motor vehicle” and a disconnected “trailer” is not on the list of motor vehicles, a towed trailer could, however, readily be viewed as becoming a “motor

¹ It will be remembered that APL is actually the long term lessee of the trailer, rather than its title holder, but that under undisputed portions of Minnesota law, such a long term lessee is expressly treated as the “owner” of the trailer for purposes of the vicarious liability provisions of the financial responsibility act. *See* MINN. STAT. § 65B.43, subd. 4 (“If a motor vehicle is the subject of a lease having an initial term of six months or longer, the lessee shall be deemed the owner for the purposes of sections 65B.41 to 65B.71 [the Minnesota No-Fault Act], and 169.09, subdivision 5a”); MINN. STAT. § 65B.43, subd. 2 (“‘Motor vehicle’ means . . . a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle.”).

vehicle” when being pulled by a truck in a single unit such as was being done here. Since the statute on legislative interpretation says that ambiguity is to be resolved in the specific application for which the statute is being used, there is an ambiguity in the specific circumstances of this collision and it thus merits consideration of external interpretive aids;

(2) External interpretive aids are allowed in the presence of an ambiguity. Both legislative history and judicial construction are expressly allowed by statute to aid in resolving an ambiguity in the specific application of a statute;

(3) External aids require rejection of the district court’s construction. The legislative purpose of a law is the primary consideration in all legislative interpretation and the purpose of the financial responsibility act is to provide coverage for serious injury accidents, not subtract it. In pursuit of this goal, prior court decisions have expressly borrowed the definition of “motor vehicle” from the No-Fault Act, which expressly makes a towed trailer a “motor vehicle,” for purposes of the financial responsibility act and thus exposes the trailer’s owner to vicarious liability, and;

(4) Vicarious liability may be imposed by federal law even if not by state law. Federal law cannot be ignored, as it can readily impose vicarious liability on instrumentalities traveling in interstate commerce even if state law does not.

This short Reply Brief emphasizes why the Appellant Vee’s construction on these questions is sound and APL’s is not. The court of appeals should adopt Appellant Vee’s analytical framework and reverse the summary judgment entered by the district court, as the district court was induced to err in reliance on APL’s faulty analytical template.

ARGUMENT

I. The Financial Responsibility Act is Ambiguous in its Specific Application to a Towed Trailer

In determining the presence or absence of an ambiguity in its enactments, the legislature has dictated that the courts *must* follow the rule that when “the words of a law *in their application to an existing situation* are clear and free from all ambiguity,” the letter of

the law should be observed. MINN. STAT. § 645.16 (emphasis added). The specific “existing situation” involved here for the financial responsibility act is whether it applies to a *towed* trailer.

Significantly, the financial responsibility act does *not* say that a towed trailer - - or indeed a trailer of any kind - - is expressly *not* to be considered a “motor vehicle” for purposes of setting the vicarious liability of its owner. Instead, the chapter 169 definition of “motor vehicle” says in § 169.01, subd. 3, only that a “motor vehicle” is “every vehicle which is *self-propelled* and every vehicle which is propelled by electric power obtained from overhead trolley wires.” MINN. STAT. § 169.01, subd. 3 (emphasis added).

As APL points out in its brief,² § 169.01, subd. 10 expressly excludes from the definition of a “trailer” any “trailer drawn by a truck-tractor semitrailer combination” and § 169.01, subd. 11 uses the specialty term “semitrailer” to mean a “trailer drawn by a truck-tractor semitrailer combination,” but the definition of “motor vehicle” in § 169.01, subd. 3 does *not* say that either “trailers” or “semitrailers” are not motor vehicles when the trailer is attached and being pulled by a semi tractor truck. A “vehicle,” under § 169.01, subd. 2 is any thing by which people or property “may be transported *or* drawn upon a highway.” A vehicle thus includes both a car, SUV or truck (which transport) or a trailer (which is drawn).

The definitional framework of chapter 169 used “self-propelled” status as the active determiner of an instrumentality’s status as a “motor vehicle.” That framework does not

² RESPONDENT APL’S BRIEF at 8.

provide a clear answer to the issue before the court. This can be seen as one takes a closer look at some obvious “motor vehicles” and tests their status as “self-propelled.”

Is a car, SUV or truck self-propelled? Each has an engine, but - - unless it is equipped with four-wheel drive - - only two of the wheels are propelled. The other wheels (and chassis attached) are either pushed or pulled along by another part of the two-wheel drive vehicle. We would not seriously consider the combined vehicle as anything but a self-propelled unit merely because not all of the wheels were drive-wheels. What about an articulated MTC bus - - one with an accordion-type connection between two segments of a large passenger compartment that has drive wheels only in the front half of the unit and simply pulls its tail-section behind? The bus is surely “self-propelled” because the unit of connected instrumentalities has a motor.

Since in each of these cases, the car, SUV, truck or bus is *as a unit* self-propelled, the vehicle is considered a “motor vehicle,” as it has a self-propelled component. The same is true of a towed trailer. When pulled behind a semi tractor truck, it becomes a “motor vehicle,” because the connected *unit* is self-propelled.³

If this construction is obvious, then the statute “unambiguously” applies to towed trailers and the court of appeals may so rule and end the issue. If this construction is one of

³ This was the construction of a non-motorized agricultural trailer being towed by a pick-up in *North River Ins. Co. v. Dairyland*, 346 N.W.2d 109 (Minn. 1984).

several possible interpretations, then the statute is ambiguous,⁴ and tools of statutory construction are appropriate for consideration.⁵

II. External Interpretive Aids point to Towed Trailers as Motor Vehicles

In Appellant Vee's principle brief, each of the eight considerations for legislative interpretation spelled out in § 645.16 were analyzed. APL failed to respond directly to any of this analysis in its brief, arguing instead that there was only one possible way to read § 169.09, subd. 5a, and that is that - - although it and § 169.01, subd. 3 do not say so expressly - - a towed trailer is not a "motor vehicle."

Appellant Vee conceded in his principal brief the obvious legal point that if a statute is unambiguous then no interpretation is allowed.⁶ Yet the thrust of APL's brief at pages 9-

⁴ A statute is considered ambiguous if it is susceptible to two or more meanings. *Hamline-Midway Neighborhood Stability Coalition v. City of St. Paul*, 547 N.W.2d 396, 399 (Minn. App. 1996).

⁵ Under § 645.16,

[w]hen the words of a law *are not explicit*, the intention of the legislature may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.

MINN. STAT. § 645.16 (emphasis added).

⁶ See APPELLANT VEE'S BRIEF at 11, n. 20 (citing multiple authorities, including *State ex rel. Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996))("If the legislature's intent is 'clearly manifested by plain and unambiguous language' of the

19 is to argue in favor of the conceded point, while simply asserting that the law is “unambiguous,” though it readily may have more than one meaning for “motor vehicle” in the specific context involved here: a towed trailer.

The relevant considerations for resolving ambiguity are spelled out in MINN. STAT. § 645.16,

(1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.

MINN. STAT. § 645.16. Despite this list, APL urges that prior interpretations are irrelevant. APL ignores the “occasion and necessity” of the law’s enactment as a consideration, and since § 169.09, subd. 5a was merely a renumbering of a prior enactment,⁷ the avowed purpose of the financial responsibility act remains clear as declared by the courts: to provide adequate compensation to the victims of motoring accidents.⁸ It also ignores the

statute, statutory construction is neither necessary nor permitted.”)).

⁷Section 170.54 - - the former location of the financial responsibility act - - was *not* repealed. Rather in 2005 Minn. Laws, ch. 163, § 88, the bill merely said “The revisor of statutes shall renumber each section of Minnesota Statutes in column A with the number in column B . . . 170.54 . . . [to] 169.09, subdivision 5a.”). This suggests a technical amendment and not a radical policy shift in the 2005 law, and that the purposes for the enactment of the original financial responsibility act should be considered. These, as Vee’s principal brief said, were to create a source of compensation for injury victims.

⁸ See, e.g., *Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co.*, 332 N.W.2d 160, 165 (Minn. 1983)(ensure innocent victims are compensated); *Shuck v. Means*, 302 Minn. 93, 96, 226 N.W.2d 285, 287 (1974) (provide assurance of compensation).

consequences of APL's interpretation: to cut out millions of dollars of compensation for the most serious collisions: those involving 60,000 pound semitrailers legally traveling at 55-70 m.p.h. on state roads.

External aids all point to the need to continue to apply a reading of the statutory scheme as was described in *Great American Insurance Company v. Golla*, 493 N.W.2d 602, 604 (Minn. App. 1992), to create access by a crash victim to coverage on trailers as defined in the No-Fault Act.

Interestingly, APL argues that Vee's suggested use of No-Fault definitions for "motor vehicles" is outlandish because chapter 65B is more than "100 chapters away" from chapter 169,⁹ yet this is exactly the approach of the court in *Golla*, as while the laws may reside in different books, their concepts are shared, which is the relevant consideration. Indeed, chapter 65B expressly says that its definition of "motor vehicle" *must* be used for purposes the vicarious liability of a long-term lessee in § 169.09, subd. 5a.¹⁰ The most persuasive interpretive aid is that of the legislature's declarations themselves. These suggest the rational outcome urged by Appellant Vee in preference to the reduction of compensation urged by APL.

⁹ RESPONDENT APL'S BRIEF at 13.

¹⁰ See MINN. STAT. § 65B.43, subd. 4 ("the lessee shall be deemed the owner for the purposes of sections 65B.41 to 65B.71 [the Minnesota No-Fault Act], and 169.09, subdivision 5a").

III. No Legislative Intent to Reduce Coverage is Evident, which is the Proposition urged by APL

At pages 19-25 of APL's brief it sets forth what it contends is "further evidence of legislative intent" that "supports the district court's application of the governing statutory definition."¹¹ The forest should not be overlooked for the presence of all the trees, however. At base, the construction urged by APL is that the legislature intended to withdraw the requirement that long term lessees of semitrailers provide financial responsibility in the form of insurance coverage. There is no legislative finding to that effect anywhere in the statutes. No where does the law say - - quite counter-intuitively - - that since semitrailer crashes are unlikely to cause serious injuries that the owners or long-term lessees of those instrumentalities should be relieved of the obligation to insure them.

Quite to the contrary, § 65B.43, subd. 4 expressly references that as to long-term lessees the definition of "motor vehicle" in chapter 65B applies to the vicarious liability provisions of "169.09, subd. 5a, notwithstanding the fact that the lessor retains title to the vehicle and notwithstanding the fact that the lessee may be the owner for purposes of chapter 168A." MINN. STAT. § 65B.43, subd. 4.

Since § 169.09, subd. 5a is concededly a *vicarious liability* statute that imposes a duty on the "owner" of a semitrailer regardless of that entity's actual fault in bringing about an accident, how can APL as the "owner" of a semitrailer seriously maintain that the legislature

¹¹ RESPONDENT APL'S BRIEF at 19 (emphasis omitted).

did not intend for it to have vicarious liability exposure? The legislature would not mandate vicarious liability coverage for long-term lessees of towed trailers and “intend” to relieve them of any vicarious liability.

Since statutes are to be read to achieve a reasoned purpose,¹² to the extent APL’s construction requires that § 65B.43, subd. 4 be ignored to achieve its reading of § 169.09, subd. 5a, APL’s construction must be wrong.

IV. Federal Law is Relevant to Resolve the Issue of Vicarious Liability

Both federal law and Minnesota state law mandate the owners of semitrailers to obtain insurance coverage to indemnify them and the owners and operators of the tractor trucks towing those trailers from liability claims for the serious type of injuries they can cause to fellow motorists on the public highways.¹³ Under federal regulations, specifically, 49 C.F.R. § 390.5, “motor vehicle” is defined to include “any . . . *trailer, or semitrailer* . . . drawn by mechanical power” and in 49 C.F.R. § 387.7 (emphasis added), the federal administrative

¹² The rules of construction in § 645.17 provide that when construing a statute the courts should assume that “(1) the legislature does not intend a result that is absurd . . . [and] . . . (2) the legislature intends the entire statute” to be effective. MINN. STAT. § 645.17(1), (2).

¹³ In MINN. STAT. § 221.605, subd. 1, the legislature decreed that Minnesota statutes affecting interstate cargo carriers must comply with federal regulations. This is consistent with federal law which provides that “[n]o State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.” 49 C.F. R. § 355.25(b). There is nothing in the record that showed that Minnesota had obtained any dispensation from federal regulations to enact § 169.09, subd. 5a in a manner that reduced insurance coverage for motor carriers engaged in interstate commerce.

authority declared that “[n]o motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart.” The federal statute and regulations specifically require the use of an MCS-90 endorsement for this purpose. *See* 49 U.S.C. § 13906 (2000); 49 C.F.R. § 387.7, § 387.15 (2002). APL took out such an endorsement. APL’s argument that these laws apply only to the tractor-trailer truck drawing the trailer and not to the trailer are contrary to the literal language of the statutes themselves.

Moreover, APL’s construction that the district court should have overlooked federal laws given the “unambiguous” declaration of § 169.09, subd. 5a that trailers were relieved of vicarious liability, neglects the worthy observation that vehicles in interstate commerce necessarily are subject to federal laws as well as state laws. Here, the trailer came from the far east via a containerized cargo ship. It is certainly subject to federal regulation. Yet APL induced the trial court to not even consider federal law. That was an error and at a minimum requires remand.

CONCLUSION

APL induced the trial court to err by suggesting that the issue of whether a “trailer” was a “motor vehicle” for purposes of the safety responsibility act, § 169.09, subd. 5a, should be resolved in the abstract without reference to the fact that the trailer was being towed by an admitted “motor vehicle.” Since the legislature has dictated that courts must judge whether any term in a state law is “ambiguous” - - not by looking at words in the abstract - -

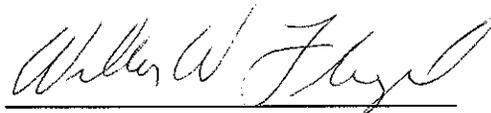
but instead by examining the “words of a law in their application to an existing situation,” and must ascertain and effectuate legislative intent, MINN. STAT. § 645.16, the fact that the definitional framework urged by APL - - § 169.01, subd. 3 - - does not prohibit a towed trailer from being treated as a “motor vehicle” when being drawn by another “motor vehicle” as an integral *unit* of transportation, means that an ambiguity is evident in the context of the accident here.

Since APL’s trailer was not unhitched and stopped at the side of the road but was part of a transportation unit being drawn by a motor vehicle, the issue remains under § 169.09, subd. 5a whether the trailer is or is not a “motor vehicle” for purposes of the vicarious liability provisions exacted by § 169.09, subd. 5a. When considering all of the criteria expressed in § 645.16 for the ascertainment of legislative intent, it is clear that given the purpose of the safety responsibility act - - to provide a source of compensation for victims of serious injury accidents over and above that of the driver - - the construction achieved by APL with the trial court removing vicarious responsibility from APL was an error of law and must be reversed.

Summary judgment in favor of APL should be reversed and the matter remanded for trial on its merits.

Respectfully submitted,

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