

CASE NO. A09-1335

State of Minnesota
In Court of Appeals

ALICE STAAB,

Respondent,

vs.

DIOCESE OF ST. CLOUD,

Appellant.

BRIEF OF AMICUS CURIAE
MINNESOTA DEFENSE LAWYERS ASSOCIATION

BURKE & THOMAS, PLLP
 Richard J. Thomas (#137327)
 Bryon G. Aschman (#237024)
 Corinne Ivanca (#0386744)
 3900 Northwoods Drive, Suite 200
 St. Paul, Minnesota 55112
 Telephone: (651) 490-1808

Attorneys for Amicus Curiae
Minnesota Defense Lawyers Assoc.

QUINLIVAN & HUGHES, P.A.
 Dyan J. Ebert (#0237966)
 Laura A. Moehrle (#0348557)
 400 South First Street, Suite 600
 P.O. Box 1008
 St. Cloud, Minnesota 56302-1008
 Telephone: (320) 251-1414

Attorneys for Appellant Diocese of St. Cloud

KEVIN S. CARPENTER, P.A.
 Kevin S. Carpenter (#015258)
 2919 Veterans Drive
 St. Cloud, Minnesota 56303
 Telephone: (320) 251-3434

Attorney for Respondent Alice Staab

PEMBERTON, SORLIE, RUFER
 & KERSHNER, P.A.
 H. Morrison Kershner (#55426)
 P.O. Box 866
 Fergus Falls, Minnesota 56538-0866
 Telephone: (800) 862-3651

Attorneys for Respondent Alice Staab

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STATEMENT OF THE CASE

This appeal results from the trial court's ruling that Minn. Stat. § 604.02¹ does not apply where there is only one defendant against whom judgment may be entered and, as a result, that defendant's liability is no longer several but is subject to full joint and several liability.²

ARGUMENT

The trial court's holding, if affirmed, will produce inconsistent and arbitrary results when applied in practice. Whether a minimally at-fault defendant would be jointly liable or severally liable would depend on whether plaintiffs have maintained an action against

¹ Minn. Stat. § 604.02, subd. 1 provides:

Joint liability. When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

- (1) a person whose fault is greater than 50 percent;
- (2) two or more persons who act in a common scheme or plan that results in injury;
- (3) a person who commits an intentional tort; or
- (4) a person whose liability arises under chapters 18B - pesticide control, 115 - water pollution control, 115A - waste management, 115B - environmental response and liability, 115C - leaking underground storage tanks, and 299J - pipeline safety, public nuisance law for damage to the environment or the public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in section 466.01.

This section applies to claims arising from events that occur on or after August 1, 2003.

² The accepted interpretation of the 2003 amendment to Minn. Stat. § 604.02 is that it changed the "general rule" from joint and several liability to several liability. "The major change is that several liability is now the general rule, rather than joint liability." Professor Steenson, "Joint and Several Liability in Minnesota: the 2003 Model," 30 Wm. Mitchell L. Rev. 845 (2004).

one, or more, defendants at the time judgment is entered. The Minnesota Defense Lawyers Association ("MDLA") urges this Court to reverse the trial court and hold that Minn. Stat. § 604.02 applies to all cases of fault, whether one defendant or many are named.

The MDLA would like to draw the Court's attention to three specific problems that will result from affirming the trial court's ruling. The MDLA's first concern is with fairness – this rule will result in a minimally at-fault defendant being held jointly liable for the entire award despite the legislature's 2003 attempt to avoid this very problem. Second, this rule will produce arbitrary results for defendants, because whether a defendant is held jointly liable for an entire award will depend on the fortuity of whether additional defendants are present at the time of entry of judgment rather than upon a defendant's actual percentage of fault. Third, the rule will discourage fair settlements based on evaluations of fault by rewarding plaintiffs who target minimally at-fault "deep pocket" defendants to take advantage of the trial court's ruling which provides a unique opportunity to obtain full recovery.

Perhaps ironically, the trial court's interpretation of Minn. Stat. § 604.02 places the greatest burden of paying injury loss on those least at fault and encourages plaintiffs to forgo suit against those whose conduct is most responsible for the damages. Including all at-fault defendants destroys joint and several liability for those parties whose fault is 50% or less. Minn. Stat. § 604.02. Pursuant to the trial court's ruling, excluding all but one at-fault defendant, regardless of percentage of fault, creates full joint and several liability for

that defendant. This unintended consequence of fully burdening those least at fault was never the intent of the legislature.

These three problems are illustrated by the following examples:

Example 1:

Assume potential defendant 1 (D1) is 5% at fault, and potential defendant 2 (D2) is 95% at fault. Also assume that D1 has a high-limits insurance policy or great solvency and D2 has neither. If plaintiff sues D1 only, D1 would be held liable for the entire verdict, even though it is only 5% at fault. If plaintiff were to sue both D1 and D2, D2 would be jointly liable for the whole amount of the award and D1 would only be severally liable for 5%. Thus, the plaintiff would, ironically, reduce his ability to collect the full award by obtaining a judgment against the party whose fault overwhelmingly is responsible for the injury. As a result, the plaintiff has an incentive to sue only D1, even though D1 is minimally at fault, because an individual judgment against D1 allows for a full recovery while a judgment against both does not.

Minnesota cannot embrace a tort system whereby a party's liability is not dependent upon fault but upon the pleading strategy of plaintiff's counsel. The ruling of the trial court creates the very nightmare that the 2003 legislature thought it was correcting – minimally at-fault defendants paying the share of the substantially at-fault defendant. Indeed, the trial court's ruling makes Minnesota law worse for the minimally at-fault defendant than at any time in recent history.³ Under the trial court's ruling, the

³ Not since prior to the 1988 amendment to Minn. Stat. § 604.02 could a defendant with 15% or less fault be jointly liable for an entire award. Clearly the legislature, with the 2003

plaintiff will be required to maintain the action against only the highly solvent, minimally at-fault defendant and leave the substantially at-fault, but minimally solvent, defendants alone. (Bringing suit against both will destroy complete recovery by operation of Minn. Stat. § 604.02.)

It is important to note that the defendant cannot cure this problem through third-party practice. Although D1 could assert third-party claims against D2 to bring D2 into the case, D1 would only have a contribution and/or indemnity claim against D2, and D2 would not be jointly and severally liable with D1 as to the plaintiff's claims, even though D2 is 95% at fault, since the plaintiff never asserted claims against D2. D1 would only be able to collect against D2 after D1 paid 100% of the judgment, but there would be no recovery if D2 were minimally insured and judgment-proof.

Example 2:

Assume a plaintiff has no fault, potential defendant 1 (D1) is insured and is 5% at fault, potential defendant 2 (D2) is uninsured and is 5% at fault, and potential defendant 3 (D3), a family member of the plaintiff, is 90% at fault. The plaintiff chooses not to sue D3. Under the trial court's interpretation of the statute, if the plaintiff chose to sue either D1 or D2, but not both, D1 or D2 will be responsible for the entire amount of the award, even though that defendant was only found to be 5% at fault. Conversely, if the plaintiff

amendment, tried to limit the exposure for the minimally at-fault defendant rather than return to the pre-1988 rule of total joint liability for defendants who are minimally at fault where only one defendant is named, but not in the cases where more than one defendant is named.

sued both D1 and D2, each would only be severally responsible for 5% of the damage award.

Even if the plaintiff sued both D1 and D2, if one of the defendants subsequently settled with the plaintiff with a Pierringer release, the remaining defendant would be held jointly liable for the entire award, because it would be the only remaining party against whom judgment could be entered.

Just as in the previous example, this rule would encourage targeting minimally at-fault, insured or solvent defendants. Indeed, that deep-pocket party will never be able to settle based upon fault but will be kept in the case as the only source of full payment. The most at-fault defendant would escape liability. Again, the ultimate liability of D1 and D2 would be arbitrary as it would depend on whether or not the plaintiff asserted claims against each potential defendant and this decision will be based entirely upon a defendant's ability to pay.

If the plaintiff sued all three defendants in this example, and a jury returned a verdict finding D1 and D2 5% at fault, and finding D3 90% at fault, a plaintiff could conceivably settle claims against D2 (the defendant without insurance or resources) and D3 (the family member) prior to entry of judgment, leaving D1 (the solvent or insured defendant) with joint liability for the entire award even though D1's expectation had been to be severally liable due to its minimal fault and the presence of the other defendant. This rule would therefore encourage tactical maneuvering in litigation rather than honest evaluations of fault for settlement purposes.

CONCLUSION

The rules of statutory construction provide that the legislature never intends an absurd result. See Minn. Stat. § 645.17(1).⁴ Nothing would be more absurd than to determine a party's joint and several liability obligation on the status of the parties at the time judgment is entered rather than upon a party's given percentage of fault. In 2003, the legislature, by passing Minn. Stat. § 604.02, specifically intended to provide relief to those defendants who are 50% at fault or less. It was clearly never the legislature's intent to increase the liability of a minimally at-fault defendant and return to the status of the law prior to the legislature's previous attempts to limit the effects of joint and several liability pursuant to its 1988 amendments. In addition, the legislature clearly never intended to create a result whereby the plaintiff had an incentive to not bring an action against the party most responsible for injury and damage because, by doing so, plaintiff eliminates the ability to recover the full amount of the award against a minimally at-fault, but solvent, defendant.

It is the stated goal of the Minnesota Defense Lawyers Association to preserve a "level playing field" for all litigants. It is the single rallying cry upon which the MDLA approaches these issues pursuant to amicus briefing and in its voluntary efforts before the legislature. Unfortunately, the trial court's ruling in this case creates one type of playing

⁴ **645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.**

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

(1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable

field where multiple defendants are present and an entirely different playing field when plaintiff elects to maintain the action against the minimally at-fault defendant only. Such an interpretation creates the result that is "absurd, impossible of execution, or unreasonable" in violation of Minn. Stat. § 645.17(1).

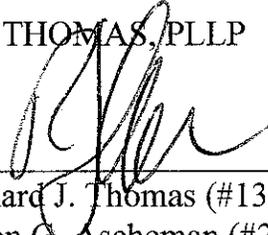
In conclusion, the MDLA urges this Court to apply a rule that will result in fairness and consistency for civil litigants in Minnesota. The MDLA respectfully requests that this Court reverse the trial court and hold that Minn. Stat. § 604.02 applies to all cases of fault, whether one defendant or many are named.

Respectfully submitted,

Dated: 8-27, 2009.

BURKE & THOMAS, PLLP

By _____


Richard J. Thomas (#137327)
Bryon G. Aschman (#237024)
Corinne Ivanca (#0386774)

3900 Northwoods Drive, Suite 200
St. Paul, MN 55112
Tel: (651) 490-1808
Fax: (651) 490-1872

**ATTORNEYS FOR AMICUS CURIAE
MINNESOTA DEFENSE LAWYERS
ASSOCIATION**