

No. A09-1335

STATE OF MINNESOTA

IN COURT OF APPEALS

Alice Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant,

APPELLANT'S REPLY BRIEF

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ARGUMENT

Respondent's brief fails to squarely address most of the arguments advanced by Appellant and instead offers conclusory statements in opposition to the same. Respondent argues, contrary to all of the authorities she cites on her own behalf, that Minnesota's joint and several liability statute should only consider the negligence of "parties" to a lawsuit as opposed to "persons" who committed negligence. As explained herein, Respondent's position is not only contrary to the plain language of the statute, but is also contrary to decades of case law. Respondent also argues, contrary to at least seven identified Minnesota Supreme Court decisions and without any case law or statutory authority, that joint and several liability only accrues when a judgment is entered, as opposed to when the tort is committed. Respondent relies on a definition of "subject to liability" (notably not a definition of "liability" as used in the statute) in arguing that the Supreme Court has been wrong in its analysis for the past sixty years. Such arguments lack merit.

As will be explained more fully below Respondent's proposed interpretation of the joint and several liability statute creates absurd results and puts artificial and undue burdens on defendants, particularly defendants that have adequate resources or insurance to pay judgments. Accordingly, the arguments should be rejected and the decision of the District Court should be reversed.

I. THE PLAIN LANGUAGE OF MINNESOTA STATUTE § 604.02 SUBDIVISION 1 DIRECTS THE STATUTE IS APPLICABLE TO ALL “PERSONS” NOT “PARTIES.”

Respondent asks this Court to ignore the plain language of Minnesota Statute § 604.02 subd. 1, which directs that the statute is applicable to all “persons” and instead artificially limit the applicability of the statute only to “parties.” Not only is this argument wholly contrary to the plain language of this statute, it is also contrary to longstanding case law related to joint and several liability.

Despite the plain statutory language, Respondent alleges that the liability of non-parties should not be considered in evaluating joint and several liability. In support of this proposition, Respondent cites to the opinions in Frey v. Snelgrove, Lines v. Ryan, and Hosley v. Armstrong Cork Co. 269 N.W.2d 918 (Minn. 1978), 272 N.W.2d 896 (Minn. 1978), 383 N.W.2d 289 (Minn. 1986). Respondent’s reliance on the decisions is misplaced. In fact, these cases stand for the exact opposite proposition advanced by Respondent.

In Frey, the Minnesota Supreme Court held that the negligence of non-parties, who had settled on Pierringer basis, should be submitted to the jury. 269 N.W.2d at 922. The Lines Court expanded this rule, and held that the fault of non-parties who were part of the “transaction,” or the injury causing event,

should be submitted to the jury regardless of whether they were ever made parties to the action or settled on any basis.¹ 272 N.W.2d at 902-903.

In Hosley, the Court applied the analysis of Frey and Lines within the context of the joint and several liability statute. 383 N.W.2d at 293. The Hosley Court recognized the apparent conflict between the use of word “persons” in subdivision one of the statute and the use of the word “parties” in subdivision two. Id. In reconciling this conflict, the Supreme Court could have applied a narrow definition to the word “persons” in subdivision one so as to comport with the plain meaning of “parties” in subdivision two. However, the Court rejected this approach and instead chose to adopt a broad interpretation of “parties” to mean “parties to the transaction.” Id. Relying on Lines v. Ryan, the Court determined that the jury ought to consider the fault of all tortfeasors. Id. The Court also determined that in enacting the reallocation provision of the joint and several liability statute, fairness dictated that any uncollectible amounts be reallocated to all at-fault parties, not just parties to the lawsuit. Id. Contrary to Respondent’s argument, a collective reading of the opinions of Frey, Lines, and Hosely fully support the plain language of Minnesota Statute § 604.02 which requires the fault of all persons be considered in determining whether joint

¹ Respondent states it is “significant” to note that no one in Lines v. Ryan sought to have their share of liability reduced by a percentage of fault attributed to a non-party. (R. Brief, p. 15). The only non-party was Jones. The jury assigned 0% fault to Jones. 272 N.W.2d at 902-903. It is hardly significant that neither Lines nor Ryan sought a reduction of fault under these circumstances.

liability exists, rather than only considering the fault of parties to the lawsuit a plaintiff has opted to sue.

Respondent asks the Court to depart from this precedent, arguing that this case is distinguishable from Hosley because if the court were to attempt to engage in reallocation of Staab's fault, the fault could only be reallocated to Appellant. (R. Brief, p. 21). Appellant is unsure how this fact distinguishes the present case from Hosley in any meaningful way so as to make the Court's holding regarding the consideration of fault of non-parties inapplicable, and Respondent doesn't offer any explanation on this point.

Respondent's argument, and her continued reliance on the dicta found in Schnieder v. Buckman, 433 N.W.2d 98, 103 (Minn. 1988) is also perplexing because it focuses on issues related to the reallocation provisions found in Minnesota Statute § 604.02 subd. 2, rather than the relevant language in subd. 1 of the statute. In Schneider, the Court commented in dicta that the reallocation procedures of Minnesota Statute § 604.02 subd. 2 were not implicated because there was only one party against whom judgment could be entered. 433 N.W.2d at 103. Because the Court was dealing with reallocation, the Court determined that the jury's assessment of fault against non-parties was "of no practical consequence" because a non-party cannot be forced to pay where there is no judgment. Schneider, 433 N.W.2d at 103 (citing Hurr v. Davis, 193 N.W.2d 943, 944 (Minn. 1923)). Importantly, Schneider Court did not hold or even state that the jury's assessment of fault was "of no practical consequence" under any set of

circumstances, it simply was of no consequence when dealing with the practicalities of reallocation. Id.

This appeal in no way relates to reallocation. Instead, this appeal raises the question of whether Appellant is subject to joint liability in the first instance under Minnesota Statute § 604.02 subd. 1, given the fact that it was assigned only 50% fault. Under the 2003 version of the joint and several liability statute, there can be no reallocation without joint liability, and there is no joint liability where a person is not more than 50% at fault. Because Appellant is not more than 50% at fault, there is no joint liability. The reallocation provisions of subd. 2 do not apply, and Respondent's lengthy analysis on this issue is wholly irrelevant.

The plain language of Minnesota Statute § 604.02 subd. 1 should be applied without tweaking or torture. The statute expressly provides that the statute applies where two or more persons are severally liable. The term persons should be given its plain meaning. There is no requirement that these persons be parties to the action. The Minnesota Supreme Court has interpreted the scope of the joint and several liability statute broadly, holding that the fault of all parties to the transaction should be considered in determining allocations of fault, regardless of whether they are parties. Hosley, 383 N.W.2d at 293. The allocation of fault to each individual tortfeasor is extremely important under the amended joint and several liability statute because it is the allocation of fault assigned to each person that determines whether that person is subject to joint liability. Minn. Stat. § 604.02 subd. 1. Accordingly, Respondent's suggested

interpretation of the statutory language should be rejected in favor of the statute's plain meaning.

II. RESPONDENT'S SUGGESTED INTERPRETATION OF THE TERM "LIABLE" IS CONTRARY TO ESTABLISHED CASE LAW AND CREATES UNNECESSARY CONFLICTS IN THE PLAIN LANGUAGE OF THE STATUTE.

Respondent asks this Court to disregard existing case law holding that "liability" for purposes of the joint and several liability statute means "liable for an injury" and instead suggests that the Court should construe the word "liable" narrowly to mean "liable for a judgment." Various courts have repeatedly held that the term "liable" means "at fault for an injury." Respondent maintains her opposition to this position despite the fact that this very question has been squarely addressed and resolved by the Minnesota Supreme Court:

It has always been the law of this state that parties whose negligence concurs to cause injury are jointly and severally liable although not acting in concert. Mathews v. Mills, 178 N.W.2d 841 (Minn. 1970).

Maday v. Yellow Taxi of Minneapolis, 311 N.W.2d 849, 850 (Minn. 1981) [emphasis added]. The Minnesota Supreme Court did not state that parties who are found jointly liable for a judgment are jointly and severally liable. The Minnesota Supreme Court has made it clear that the "liability" necessary for triggering the application of the joint and several liability statute is concurring negligence, not an obligation to pay a verdict.

Indeed, at various points throughout her Responsive Brief, Respondent cites to case law and other authorities that stand for this exact proposition. On

page seven of Respondent's brief, Respondent cites to the Minnesota Supreme Courts opinion in Kirsch v. Skow which holds "where there is joint and several liability, plaintiffs may sue one, all or any number of joint tortfeasors without violation of Rule 19.01." 233 N.W.2d 732, 734 (Minn. 1975). Here the Court uses the phrase "joint and several liability" to describe a circumstance that exists before a plaintiff even sues out the case, allowing the plaintiff to then sue one or more of the at fault tortfeasors. Id. If we were to accept Respondent's theory that "liability" can only mean "liable for a judgment," the Court's holding in Kirsch would be self-contradictory and meaningless.

The Minnesota Supreme Court spoke again on this issue in Hosley, stating that the comparative negligence statute and the comparative fault statute were codifications of the common law that "parties whose negligence concurs to cause an injury are jointly and severally liable." 383 N.W.2d at 292. The common law referenced by Hosley is set forth in decisions such as Employers Mut. Casualty Co. v. Chicago, St. P. M. & O. Ry. Co., White v. Johnson, and Spitzack v. Schumacher, all of which are also decisions of the Minnesota Supreme Court. 50 N.W.2d 689 (Minn. 1951); 137 N.W.2d 647 (Minn. 1965); 241 N.W.2d 641 (Minn. 1976).

Despite the fact that the Minnesota Supreme Court has directly and unequivocally spoken on this issue on at least seven occasions in Employers Mut., White, Spitzack, Kirsch, Matthews, Maday, and Hosley, Respondent maintains that the Court really "meant" to say that persons are "subject to liability" when

their negligence concurs to cause an injury and that the definition of “liable” really means “liable for a judgment.” (R. Brief, p. 17). Respondent draws the “subject to liability” language from the Restatement (Second) of Torts definition section, which is a term of art the Restatement uses internally. Notably, Respondent does not refer to the definition of “liable” from the Restatement, but instead chooses a different term entirely. Furthermore, Respondent has not offered any argument or evidence that the Courts have adopted this term of art in any manner. Indeed, despite the fact that the Restatement definition has been in effect since 1969, the Minnesota Supreme Court has continued to state that joint and several liability accrues when negligence concurs to cause injury.

Nevertheless, Respondent asks this Court to ignore the Minnesota Supreme Court’s decisions and instead be guided by the internal definitions provided in the Restatement. Respondent argues that the Supreme Court “meant” to say that persons were not “liable” but only “subject to liability” upon commission of a tort. This argument is particularly specious in light of the fact that the Minnesota Supreme Court has specifically and repeatedly held that joint and several liability accrues when negligence concurs to cause injury. See Kisch, 233 N.W.2d at 734; Hosley, 383 N.W.2d at 292, Maday, 311 N.W.2d at 350.

The appropriate analysis presented by the issue on appeal here is to determine the plain meaning of the word “liable” as used in Minnesota Statute § 604.02 subd. 1, using the Court’s prior rulings as guidance. Respondent’s argument posits that each and every time the Court has used the term “liable”

over the past sixty years of jurisprudence when discussing when liability accrues, each and every Court erred in its analysis and really meant to use the term “subject to liability” instead of “liable.” Indeed, Respondent goes as far as to cite the direct language of the Supreme Court opinion in White as follows:

The Court ruled that the City became liable [actually, subject to liability- see discussion of Restatement (Second) Torts, §5, above in this brief] not because of statutory notice of a claim but because of causally negligent conduct.

(R. Brief, p. 25). As this citation demonstrates, Respondent’s argument can only be made where the plain language of the Court’s opinions is ignored or at least creatively strained by substituting the Restatement language for the language chosen by the Courts.

Furthermore, if the term “liable” used by the Minnesota Supreme Court for the past sixty years should be replaced with “subject to liability” as Respondent suggests, should it not also be the case that the term “liable” as used in the joint and several liability statute should likewise be modified to read “subject to liability” particularly because the Court was relying on this statutory language when issuing their opinions?

The Minnesota Supreme Court has repeatedly held that for purposes of joint and several liability, liability accrues when negligence concurs to cause injury. Respondent has failed to provide any apposite authority to the contrary. Therefore, in determining whether Appellant is subject to joint liability, the Court simply must determine whether two or more person’s negligence concurred to

cause Respondent's injuries, and if so, whether Appellant's allocation of fault for Respondent's injuries was greater than 50% so as to trigger joint liability. Here, the jury found that the negligence of Appellant and Richard Staab concurred to cause Respondent's injuries, but that Appellant was not more than 50% at fault. Therefore, Appellant is subject to several, but not joint, liability.

III. RESPONDENT IGNORES THE CHANGE OF THE WORD "JOINTLY" TO "SEVERALLY."

In 2003, the Minnesota Legislature deliberately changed the first sentence of the joint and several liability statute such that whereas the statute used to apply where two or more people were jointly liable, it now applies where two or more people are separately liable. Prior to 2003, the statute held persons jointly liable for 100% of a plaintiff's damages unless certain exceptions applied, making joint liability a "default" position. Through the 2003 amendments, the legislature removed the joint liability default position, and instead determined that each person would be severally liable for their own allocation of fault unless certain circumstances applied to trigger joint liability.

Respondent has failed to address this change by the legislature, and has failed to address any of the points and authorities raised in Appellant's initial brief. Respondent simply argues that her definition of "liable" trumps any application of the word "severally" and summarily concludes her analysis.

IV. RESPONDENT'S PROPOSED INTERPRETATION OF THE STATUTE WOULD LEAD TO ABSURD RESULTS.

Respondent admits that under the 2003 version of the joint and several liability statute, where two or more people are severally liable, a party who is not more than 50% at fault may not be held liable for more than its share of fault. (R. Brief, p. 27). However, Respondent alleges that where there is only one party to the lawsuit, the joint and several liability statute does not apply, even when more than one person is found liable for a plaintiff's injuries. This interpretation leads to an absurd result.

For example, consider a situation where a plaintiff (P) is injured by the negligence of three tortfeasors (A), (B) and (C). P sues A, but chooses not to sue B or C. The jury finds that A is 1% at fault for P's injuries, and B is 1% at fault and C is 98% at fault. Under Respondent's interpretation of the joint and several liability statute, A would be responsible for 100% of the jury's award because P chose not to sue B or C.

Now consider the same situation except that P sues A and B, but chooses not to sue C. The jury again finds that A is 1% at fault, B is 1% at fault, and C is 98% at fault. Under Respondent's interpretation of the statute, A and B are parties who are severally liable for a judgment, but both have been found to be less than 51% at fault, and therefore A and B must each only pay 1% of P's damages, and are not jointly liable for the entire award.

The only difference between these two scenarios is who the plaintiff chooses to sue, yet under the first scenario, A must pay 100% of P's damages, and under the second scenario, A must only pay 1% of P's damages. A defendant's obligation to pay a Plaintiff's damages should be commensurate with the defendant's actual allocation of fault, not the number of parties a plaintiff chooses to sue. This issue is particularly problematic where a defendant is wholly defenseless to prevent this scenario. As discussed in Appellant's original brief, the Minnesota Supreme Court in Imlay v. City of Lake Crystal questioned whether a defendant can trigger the application of joint and several liability by bringing in another tortfeasor as a third party. 53 N.W.2d 326 (Minn. 1990). A third-party defendant is only liable to the third-party plaintiff for contribution or indemnity. A third-party defendant is not obligated to pay a plaintiff's damages unless the plaintiff asserts a direct claim against the third-party defendant. While the joint and several liability statute is intended to prevent a minimally at-fault party from paying the majority of a plaintiff's damages, under Respondent's interpretation of the statute a plaintiff could easily avoid the operation of the statute by simply suing only the most well-insured or 'richest' tortfeasor, and refusing to sue an indigent party or a family member so that the rich tortfeasor must absorb the fault of the non-joined parties. This scenario is not fictional or theoretical; it is exactly what occurred in this case. Again, Respondent's analysis does not address this problem.

Appellant's interpretation of the statute wholly avoids this complication. If two or more people are negligent and this negligence combines to cause an injury, each person is severally liable for their own percentage of fault. It is only where one person is more than 50% at fault that that person is liable for the entire jury verdict. Accordingly, if a plaintiff chooses to sue a person who is 1% at fault to the omission of the person who is 99% at fault, the plaintiff runs the risk of not collecting 99% of their verdict. However, if a plaintiff sues a person that is 51% at fault or more to the exclusion of persons who were lesser contributors to the injury, the plaintiff is entitled to 100% of their award, and the defendant still retains the right of contribution against any other tortfeasors. This analysis fits squarely within the plain language of the statute.

Respondent argues that Appellant's interpretation will "lead to plaintiffs suing every possible actor connected with the event." This is simply not true. The statute will motivate plaintiffs to sue the parties that harmed them, not the persons who happen to have the most money.

CONCLUSION

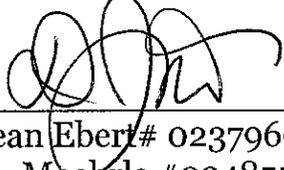
Minnesota's joint and several liability statute applies where two or more persons commit negligence that combine to cause an injury. In this case, the jury found that Appellant and Richard Staab were both negligent, and that their negligence concurred to cause an injury. However, Appellant and Richard Staab are "persons" that are "severally" or separately liable. Under the plain language of Minnesota Statute §604.02 subd. 1, there can be no joint liability for the entire

award unless a person is found to be more than 50% at fault. Appellant is not more than 50% at fault, and therefore there is no joint liability in this case. The District Court's Order requiring Appellant to pay 100% of the jury's verdict under these circumstances is contrary to Minnesota Statute § 604.02 subd. 1 and should be reversed.

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Dated: 9/29/09

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