

A09 – 1335

STATE OF MINNESOTA  
IN SUPREME COURT

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Alice Ann Staab,

Appellant,

vs.

Diocese of St. Cloud,

Respondent.

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**BRIEF, ADDENDUM AND APPENDIX OF APPELLANT ALICE ANN STAAB**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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**APPELLANT STAAB'S STATEMENT OF THE LEGAL ISSUE AND ITS  
RESOLUTION BY THE COURT OF APPEALS:**

Issue: Where a jury apportioned fault at 50% to a party defendant and 50% to a non-party, did the trial court err in holding the party defendant 100% liable for the damage award?

The Court of Appeals held: The Court of Appeals reversed the trial court, holding that under Minn. Stat. § 604.02, Subd. 1 (2008), a party defendant found at fault by a jury shall have its obligation to the plaintiff reduced by the percentage of fault attributed by the jury to a non-party.

List of most apposite cases:

*American Family Ins. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000)

*Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978)

*Lines v. Ryan*, 272 N.W.2d 896 (Minn. 1978)

List of most apposite constitutional and statutory provisions:

Minn. Stat. § 604.02, Subd. 1 (2003)

## **APPELLANT STAAB'S STATEMENT OF THE CASE AND THE FACTS**

### **APPELLANT STAAB'S STATEMENT OF THE CASE**

Alice Ann Staab, who suffers from multiple sclerosis, was seriously injured on April 9, 2005, when she fell from her wheelchair as it went over an unmarked 4-5 inch drop-off at the Holy Cross Parish School. At the time of Ann Staab's injury her wheelchair was being pushed by her husband, Richard Staab.

Ann Staab sued the Diocese of St. Cloud, which owns and operates the Holy Cross Parish School, seeking damages for her 4/9/2005 injury. In its Answer the Diocese denied it was at fault and asserted that Ann Staab's injury was the result of either her own fault or the fault of one or more unknown persons. At trial the Diocese continued its denial of fault but, before the case was submitted to the jury, the Diocese withdrew its assertion that Ann Staab was at fault. Before the case went to the jury, the Diocese asked the trial court to include questions about Richard Staab's possible fault on the verdict form. This request was granted. In closing argument to the jury counsel for the Diocese suggested that the jury find neither the Diocese nor Richard Staab at fault for Ann Staab's injury.

The jury by its verdict found the Diocese and Richard Staab each 50% at fault for Ann Staab's injury and found Ann Staab was damaged in the amount of \$224,200.70. Because Richard Staab was not a party the trial court had no

jurisdiction to enter judgment against him. As for the two parties over which the trial court did have jurisdiction, Ann Staab and the Diocese of St. Cloud, the claim that Ann Staab was at fault for her own injury had been withdrawn and a jury by its verdict had found that the Diocese through negligence had caused Ann Staab's injury. The trial court adjudged the only at-fault party, the Diocese, 100% liable for Ann Staab's damages.

In post-trial motion and appeal, the Diocese did not dispute the trial court's finding that the Diocese was at fault for Ann Staab's injury, and the Diocese did not dispute the damage award to Ann Staab for her injury. The Diocese argued that it was only liable to Ann Staab for 50% of her damages because the jury had found Richard Staab 50% at fault for Ann Staab's injury. The trial court didn't buy this argument but the Court of Appeals did. The Court of Appeals reversed the trial court, holding that under Minn. Stat. § 604.02 Richard Staab and the Diocese are each "severally liable" for 50% of Ann Staab's damages even though Ann Staab cannot recover damages from Richard Staab because he is not a party to the case.

### **APPELLANT STAAB'S STATEMENT OF FACTS**

On April 9, 2005, Appellant Ann Staab and her husband Richard Staab attended an open house celebration in the cafeteria/gymnasium of the parochial school where their daughter teaches kindergarten, the Holy Cross Parish School.

The School is part of Holy Cross Parish, and the Parish is owned and operated by Respondent Diocese of St. Cloud.

At the time of her injury Ann Staab was in a wheelchair because she has multiple sclerosis. Complaint, ¶ 2, A.1. After attending the open house celebration, Ann and Richard Staab noticed that the doorway through which they had entered the school's cafeteria/gymnasium was crowded but there was another doorway marked as an exit with its doors propped open. As Richard Staab pushed his wife Ann's wheel chair through the open doorway the wheel chair went over an unmarked 4-5 inch drop-off. Ann fell forward out of her wheel chair and onto a concrete sidewalk. Complaint, ¶ 3, A.1. As a result of the fall, Ann Staab fractured her leg. Ann Staab's recuperation from her leg fracture was complicated by Ann developing three bed sores which took about 18 months to heal.

Ann Staab's husband Richard Staab has never been a party to this lawsuit.

In Answer to the Complaint, Respondent Diocese did not specifically allege that Richard Staab had been negligent at the time of his wife's injury. The Diocese alleged that Appellant Ann Staab "...may have been contributorily negligent..." and the Diocese alleged that "...others over whom this answering Defendant had no control may have been contributorily negligent ..." Answer of Defendant Holy Cross Parish, ¶¶ VI and ¶ VII, A.4.

Shortly before trial Respondent Diocese moved the trial court in limine for an order holding that any causal negligence found by the jury on the part of

Richard Staab would be aggregated with any causal negligence found by the jury on the part of Appellant Ann Staab. See Defendant's Motion in Limine to Establish Joint Enterprise, A.6. This motion was denied.

Before the case was argued and submitted to the jury, Respondent Diocese withdrew its allegation that Appellant Ann Staab had been negligent at the time of her injury and asked the trial court to submit to the jury questions of whether Richard Staab had been negligent and, if so, whether his negligence had been a cause of Ann Staab's injury. Appellant Ann Staab did not object to these requests. In closing argument counsel for Respondent Diocese told the jury that the evidence and the court's instructions warranted finding that neither Respondent Diocese nor Richard Staab was negligent at the time of Appellant Ann Staab's injury.

The jury by its verdict found both Respondent Diocese and Richard Staab causally negligent, and the jury assigned 50% as the percentage of causal negligence attributable to each. Add.4. The trial court made Findings of Fact, Conclusions of Law, and an Order for Judgment adopting the jury's verdict as its Findings of Fact and concluding that the Respondent Diocese is liable for the damages determined by the jury, plus costs and disbursements. Add.2 through Add.3. Respondent Diocese moved the trial court for amended findings and that motion was denied. A.15; Add.8. Respondent Diocese appealed only from the trial court's refusal to hold Respondent Diocese liable for 50%, rather than 100%, of Appellant Ann Staab's damages.

The Court of Appeals reversed the trial court and held that under Minn. Stat. § 604.02, Subd. 1 (2008), a party defendant found at fault by a jury shall have its obligation to the plaintiff reduced by the percentage of fault attributed by the jury to a non-party. Add.13. The Supreme Court granted Appellant Staab's petition for review of the decision of the Court of Appeals. Add.21.

## **RESPONDENT STAAB'S ARGUMENT**

### **Scope of Review/Standard of Review**

Conclusions of law, including interpretations of statutes, are reviewed *de novo*. *F-D Oil Co., Inc. v. Commissioner of Revenue*, 560 N.W.2d 701 (Minn. 1997). In *American Family Ins. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000), the Supreme Court explained:

When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. See *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* Basic canons of statutory construction instruct that we are to construe words and phrases according to their plain and ordinary meaning. See *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). A statute should be interpreted, whenever possible, to give effect to all of its provisions; "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Amaral*, 598 N.W.2d at 384 [citing *Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983)]. We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations. See *Van Asperen v. Darling Olds, Inc.*, 254 Minn. 62, 73-74, 93 N.W.2d 690, 698 (1958); see also *Erickson v. Sunset Mem'l Park Ass'n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961). Finally, courts should construe a statute to avoid absurd results and unjust consequences. See *Erickson*, 259 Minn. at 543, 108 N.W.2d at 441. When construing a statute, our goal is to ascertain and effectuate the intention of the legislature. See *Amaral*, 598 N.W.2d at 385-86.

While statutory construction focuses on the language of the provision at issue, it is sometimes necessary to analyze that provision in the context of surrounding sections. See *Van Asperen*, 254 Minn. at 74, 93 N.W.2d at 698; *Erickson*, 259 Minn. at 543, 108 N.W.2d at 441.

**Minn. Stat. § 604.02, Subd. 1, does not mandate, authorize or permit that a defendant found at fault have her/his/its obligation to the plaintiff reduced by a percentage of fault attributed to a non-party.**

**1. Because the clear and unambiguous language of Section 604.02, Subd. 1 states that it applies only where two or more persons are severally liable, in a case where only one person is severally liable Section 604.02, Subd. 1 does not apply.**

The Court of Appeals holding that Richard Staab and the Diocese are each severally liable, limiting Ann Staab to 50% of her damages, is contrary to the clear and unambiguous language of Section 604.02, Subd. 1. The first step in statutory construction is to determine whether the statute's language, on its face, is either clear or ambiguous. If the statute's language is clear then there is no need to evaluate it further.

Minn. Stat. § 604.02, Subd. 1, titled "Joint liability," as amended in 2003, states in relevant part:

**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; ... [Emphasis added].**

This statute begins with the phrase "when two or more persons are severally liable." Black's Law Dictionary (6<sup>th</sup> Ed. 1990) defines "liable" as "Bound or obligated in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution." Defining the term "severally," Black's Law Dictionary (6<sup>th</sup> Ed. 1990) notes: "When applied to a number of

persons the expression *severally liable* usually implies that each one is liable alone.”

Because a finding against a non-party creates no liability for that non-party, in a case like this where a party and a non-party have been found at fault only one person, the party, is liable. The statute clearly and unambiguously does not apply when only one person is liable.

Moreover, the statute must be read to give effect to all of its provisions. See *Amaral, supra*, 598 N.W.2d at 384. The initial phrase of the statute, “when two or more persons are severally liable,” should leave no doubt as to its meaning. Any possible doubt should be resolved by reading further in the same sentence, where the statute states: “...contributions to awards shall be in proportion to the percentage of fault attributable to each.” A non-party found at fault, like Richard Staab, has no obligation to contribute to an award. This statute cannot apply to him. This statute does not limit Ann Staab’s right to recover her full damages from the Diocese, the only “person” found liable.

In the Syllabus of its decision the Court of Appeals acknowledged that “the injured party [Ann Staab] may not recover from a nonparty tortfeasor [Richard Staab] ...” And yet, the Court of Appeals somehow concluded:

Further, both appellant [the Diocese] and Richard Staab are “severally liable” because they were found to share a portion of the fault in causing the accident that injured respondent [Ann Staab]. Under the plain language of the statute, they are “each” to “contribute” to the damages “award” “in proportion to the percentage of fault attributable to each.”

In short, the Court of Appeals ruled that Richard Staab is “severally liable” for purposes of Section 604.02, Subd. 1 even though he is not “severally liable” in any other way. This violates basic canons of statutory construction. As noted in the Scope of Review/Standard of Review section of this brief:

Basic canons of statutory construction instruct that we are to construe words and phrases according to their plain and ordinary meaning. See *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). *American Family Ins. v. Schroedl, supra*, 616 N.W.2d at 278.

This canon dictates that words in a statute, such as “severally liable” in this case, must have the same definition for purposes of the statute as they have everywhere else.

Reading the statute as a whole and construing the words according to their plain and ordinary meaning, the statute cannot be read to apply to a non-party found at fault because the nonparty is not severally liable and has no obligation to contribute to a damage award.

**2. When the Diocese asked the trial court to include, on the verdict form, questions about Richard Staab’s possible fault, the trial court was obligated by *Lines v. Ryan* to do it.**

Whose fault do we ask the jury to decide? In the case of *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978), citing *Connar v. West Shore Equipment of Milwaukee*, 227 N.W.2d 660, at 662 (Wis. 1975), the Minnesota Supreme Court wrote:

If there is “evidence of conduct which, if believed by the jury, would constitute negligence [or fault] on the part of the person \*\*\* inquired about,” the fault or negligence of that party should be submitted to the jury. 269 N.W.2d at 923.

This statement uses the word “party,” as in “party to the lawsuit,” but it actually refers to both current parties to the lawsuit and former parties to the lawsuit who have been released by the plaintiff using a Pierringer release. See discussion, 269 N.W.2d at 923.

This description of those whose fault should be submitted to the jury, in addition to including parties released via Pierringer release, appears to exclude those entitled to dismissal under Rule 50.01 of the Rules of Civil Procedure. Rule 50.01 authorizes a trial court to grant a motion for judgment as a matter of law in favor of a party if there is “no legally sufficient evidentiary basis for a reasonable jury” to find against that party.

Just over three months after *Frey*, the Supreme Court decided *Lines v. Ryan*, 272 N.W.2d 896 (Minn. 1978). In *Lines*, the trial court joined for trial various claims arising from the same three-car collision and submitted all the issues raised by the various claims to one jury. The three drivers involved in the collision were Lines, Ryan and Jones. On appeal, Lines argued that the trial court erred in instructing the jury in the *Lines v. Ryan* action to compare Jones’ negligence with that of Lines and Ryan because Jones was not a party to the *Lines v. Ryan* case. The Supreme Court disagreed. Citing *Frey* and *Connar*, the Supreme Court declared:

" \* \* \* It is established without doubt that, when apportioning negligence, a jury must have the opportunity to consider the negligence of **all parties to the transaction**, whether or not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to the other tort-feasors either by operation of law or because of a prior release. **Emphasis added.** 272 N.W.2d at 902-903.

This group is more inclusive than the one defined in *Frey*. "All parties to the transaction" is not limited to current parties to the lawsuit and former parties released via Pierringer release.

It is important to note that the trial court in *Lines* did not submit the issue of Jones' fault in the claim of Lines against Ryan because of a need for the jury to consider the possible fault of "all parties to the 'transaction'" in order to properly determine the issues involved in Lines' claims. Undoubtedly the trial court had simply sought the least confusing approach to submitting to the jury all of the issues raised by all of the claims that arose from one three-car collision. And it is difficult to see how Ryan may have been prejudiced by the jury considering Jones' fault along with his.

The phrase "all parties to the transaction" includes even those marginally or peripherally involved. It becomes difficult for the trial court to exclude those with minimal or questionable involvement in the "transaction," especially because the person being considered for inclusion is a non-party and as such is not present to object to being included.

While the class defined in *Lines* is broad in scope, it apparently has limits. In *Ripka v. Mehus*, 390 N.W.2d 878 (Minn. App. 1986), the Court of Appeals

refused a request to have the jury consider the fault of a “phantom tortfeasor,” explaining:

In *Frey*, *Connar*, and *Lines*, however, the missing defendants were people or entities whose identities were known. In *Frey*, the missing defendants had settled on Pierringer releases. In *Connar*, the missing defendant was immune from suit by operation of the workers' compensation laws. And in *Lines*, the plaintiff brought two separate lawsuits against the other two drivers in a three-car collision. The court held that in each suit the negligence of the two defendants must be apportioned.

Here, defendant argues that the trial court should have submitted to the jury for apportionment the negligence of a “phantom” tortfeasor, [footnote omitted] the sole evidence of whose existence is the allegations made by defendant. 390 N.W.2d at 881.

The appellate court in *Ripka v. Mehus* concluded:

The Minnesota Supreme Court has not decided the issue whether, under any circumstances, the alleged negligence of an unknown, phantom tortfeasor must be submitted to the jury for apportionment under the Comparative Fault Act and if so, what form or quantum of evidence of the phantom tortfeasor's existence is necessary to create a jury issue. We need not decide this ultimate issue here, however. We simply hold that a mere allegation by the defendant that the phantom tortfeasor existed is insufficient to justify submission to the jury. 390 N.W.2d at 882.

But, adding an interesting twist to this discussion, the Court of Appeals in

*Ripka v. Mehus* also wrote, at the very end of the decision:

In addition, we note that it was up to defendant to locate and, if necessary, bring a third party action against any other parties who she alleges were liable to the plaintiff. See Minn.R.Civ.P. 14.01. 390 N.W.2d at 882.

If the *Ripka* court's interpretation of Rule 14.01 were accurate, in this case it would mean that Richard Staab's fault could only be considered by the jury if Respondent Diocese added him to the lawsuit as a third party defendant. But the *Ripka* reference to Rule 14.01 appears to be an overstatement of the

requirements of the rule, which provides that "...a defendant as a third-party plaintiff may serve a summons and complaint ... upon a person ... who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim ..." See Minn.R.Civ.P. 14.01 [Emphasis added]. In this case, in light of the language of both *Frey* and *Lines*, the trial court was obligated to grant the Diocese's request to put the issue of Richard Staab's fault on the verdict form even though Richard Staab was not a party in the case.

**3. Even though *Lines v. Ryan* obligated the trial court to ask the jury whether Richard Staab was at fault, because Richard Staab was not a party the court had no jurisdiction to adjudge him liable, to anyone, for anything.**

In may seem that this point is so obvious it need not be stated; but the Court of Appeals missed it.

Most of the trouble comes from giving credence to the jury's finding of fault on Richard Staab's part. If we assume that Richard Staab truly is 50% at fault for his wife's injury, then we tend to think that the Diocese shouldn't be held responsible for Richard Staab's fault as well as its own; we tend to think that if we don't hold Richard Staab responsible for 50% then he is getting away with something; and we tend to think that Ann Staab ought to collect half her damages from the Diocese and half her damages from her husband. We also tend to think that, even though Richard Staab is 50% at fault, Ann Staab didn't sue him because he is her husband.

The truth of the matter is that Richard Staab hasn't been found at fault in a proceeding in which he was a party, a proceeding with results binding on him. The difference between finding Richard Staab "at fault" as he was here and finding him at fault in a trial where he is a named party is like the difference between a baseball player hitting a "home run" in batting practice and a baseball player hitting a home run in a real game; the former doesn't count, the latter does.

**4. In addition to the fact that Section 604.02, Subd. 1, doesn't call for it, there are other good reasons for not allowing an at-fault defendant to reduce her/his/its obligation to plaintiff by a percentage of fault attributed to a non-party.**

For over thirty years we have had the directive, from *Lines v. Ryan*, that the trial court should include on the verdict form fault questions pertaining to "all parties to the 'transaction,'" meaning everyone not entitled to dismissal under Rule 50.01. What's been missing, except in limited cases such as those involving a Pierringer-released defendant, is the incentive for defendants to ask that it be done.

Given the Court of Appeals' interpretation of § 604.02, Subd. 1 in this case, defendants in civil cases will want to develop in discovery evidence of fault by as many people as possible, even those only marginally involved in the "transaction" which is the subject of the case. A defendant will want as many names as possible on the verdict form because any fault found against someone else

reduces the defendant's share of the obligation to the plaintiff. And a defendant will prefer that those named on the verdict form not actually be parties because non-parties cannot defend the claims against them.

In contrast, plaintiffs' lawyers will be criticized, and possibly sued for malpractice, if they don't add to the lawsuit all parties whose fault might be included on the verdict form because the portion of damage attributable to the fault of non-parties will be uncollectible from the party at fault. It is unclear how a ruling requiring plaintiffs' counsel to be expansive in suing parties only nominally at fault advances our civil justice system, a system which is already under attack, and perceived by many as out of control, because of alleged frivolous lawsuits.

**APPELLANT STAAB'S CONCLUSION**

Because the trial court appropriately ruled that Minn. Stat. § 604.02, Subd. 1, does not apply when only one party is liable, the Supreme Court must reverse the decision of the Court of Appeals and reinstate the judgment of the trial court holding Respondent Diocese of St. Cloud liable for 100% of Appellant Staab's damages.

Respectfully submitted,

**CARPENTER INJURY LAW OFFICE**

Dated: 6-23-10



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**APPELLANT STAAB'S CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4787 words. This brief was prepared using Microsoft Office Word 2007.

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