

STATE OF MINNESOTA

IN SUPREME COURT

A12-1575

A12-1972

Alice Ann Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant.

BRIEF OF *AMICUS CURIAE*
MINNESOTA ASSOCIATION FOR JUSTICE

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INTRODUCTION

Amicus Minnesota Association for Justice (MAJ)¹ submits this brief to aid the court in its application of the reallocation statute, and in assessing the meaning of “uncollectible” as that term is used in the state’s loss reallocation statute, and whether the term “party” used in the same statute includes someone who was not named or sued as a party as well someone who was.²

The statute says that the decision on “collectibility” is for the trial court which decides at the time that a judgment is entered whether it is collectible as to a given person. The supreme court has repeatedly held that the term “party” in the loss reallocation statute includes both those who were named as parties to the lawsuit and those at-fault persons who were not, but to whom a jury apportioned fault.

Here the trial judge ruled that the share of fault allocated by the jury to a non-party was uncollectible as the plaintiff had no judgment against that person, and the court thus reallocated that person’s fault to the other at-fault party, the Appellant-Diocese, requiring it to pay the entire award. The court of appeals affirmed. This court granted review and on July 9, 2013, ordered that Amicus MAJ may submit this brief.

¹ Pursuant to Minn. R. Civ. App. Prac. 129.03, it should be noted that neither MAJ nor the writer of this brief has received or been promised any monetary or other compensation in regard to this case, and neither has a financial stake in the outcome of this case. No one affiliated with a party has participated in writing any part of this brief.

² A case-specific issue was raised below regarding the proper date from which post-verdict interest should be calculated. MAJ takes no position on that question.

ANALYSIS

I. The Term “Party” in the Loss Reallocation Statute Means Persons who are Parties to the Tort, Regardless of whether they are Named in the Lawsuit

The Loss Reallocation Statute provides:

Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party’s equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Minn. Stat. § 604.02, subd. 2 (emphasis added).

The term “party” as used in the statute was earlier explained in *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012), but it was described by this court over 25 years earlier, in *Hosley v. Armstrong Cork Co.*, 383 N.W.2d 289, 293 (Minn. 1986), allowing the court in 2012 to simply adopt its earlier analysis.

In *Hosley*, the Minnesota Supreme Court had held that the word “party” in the loss reallocation statute meant anyone involved in the tort and not just named parties in the lawsuit. *Id.* at 293. In *Staab*, the court reiterated that ruling in 2012, clarifying that the meaning of the word “party” in the joint-and-several liability statute is the same meaning it holds in the loss reallocation statute:

Previously we have determined that the word “party” in subdivision 2 includes all parties to the transaction giving rise to the cause of action. [citation omitted] Because “party” in subdivision 2 means all persons who are parties to the tort, regardless of whether they are named in the lawsuit, it logically follows that “persons” in subdivision 1 must also mean all parties

to the tort.

Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 76 (Minn. 2012), citing *Hosley v.*

Armstrong Cork Co., 383 N.W.2d 289, 293 (Minn. 1986).

Since §604.02 is in derogation of common law, it is to be construed narrowly. See *Rasenbergs v. Heritage Renovations*, 685 N.W.2d 320, 327 (Minn. 2004). That means that to the extent a statute does not completely abrogate common law, the unamended common law remains vital. See, e.g., *Swanson v. Brewster*, 784 N.W.2d 264, 270 (Minn. 2010) (“the collateral source statute only partially abrogates the common-law collateral-source rule.”). Here, Richard Staab has common law liability for his wife’s injury, as the *Staab* court noted: “section 604.02 applies whenever multiple tortfeasors act to cause an indivisible harm to a victim, regardless of how many of those tortfeasors are named as parties in a lawsuit arising from the tort.” *Staab*, 873 N.W.2d at 77. This principle prompts the result here: a “party” to the tort is subject to loss reallocation when their aliquot share of fault is uncollectible.³

The term “party” as used in the loss reallocation statute of § 604.02, subd. 2, thus clearly and unambiguously includes persons who are parties to the tort, even if they were not named as parties in the lawsuit.

³This also serves as the basis for distinguishing the language in *Eid v. Hudson*, 521 N.W.2d 862, 864 (Minn. App. 1994), that “unless joint liability is established . . . Minn. Stat. §604.02, subd.2 does not apply. . . .” “When common law liability exists, a tortfeasor will be subject to loss reallocation, even if not a party.

604.02, subd. 2, but rather it remained unchanged from the previous legislative adjustment.

That fact was deemed significant by the court of appeals in *O'Brien v. Dombeck*, 823 N.W.2d 895 (Minn. App. 2012). There the court observed that,

when it enacted the 2003 amendment, the legislature left subdivision 2 intact. See 2003 Minn. Laws ch. 71, at 386 (amending only Minn. Stat. § 604.02, subd. 1). Subdivision 2 broadly provides for reallocation whenever a party's equitable share of the obligation is uncollectible. See Minn. Stat. § 604.02, subd. 2. If the legislature had intended to limit the availability of reallocation to cases involving joint and several liability, it could have expressly provided such a limitation, as it did in subdivision 1. Because the legislature did not alter the plain text of the reallocation provision, we decline to read such a limitation into the statute.

O'Brien, 823 N.W.2d at 899.

While the case of *Eid v. Hudson*, 521 N.W.2d 862 (Minn. App. 1994), did rule that “[u]nless joint liability is established . . . Minn. Stat. § 604.02, subd. 2 does not apply and there is no basis for reallocating any uncollectible amount of a judgment to another party,” *id.* at 864, importantly, “*Eid* relied on the former version of the statute.” *Id.*

Significantly, in 1992 the joint-and-several statute

provided, “When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each....” Minn. Stat. § 604.02, subd. 1 (1992) (emphasis added). By contrast, the statute currently provides, “When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each. . . .” Minn. Stat. § 604.02, subd. 1 (2010) (emphasis added). Thus, under the reasoning of *Eid*, the statute now permits reallocation when two or more persons are severally liable.

Eid is also distinguishable because of its unique facts. In that case,

the district court entered two separate judgments against the liable co-defendants. *See Eid*, 521 N.W.2d at 863. Reallocation was unavailable because the defendants there were subject to separate judgments. *Id.* at 864. They were not jointly and severally liable to the plaintiff with respect to a single judgment. *Id.* Nor were they severally liable on one judgment. *Id.* Read in this light, *Eid* did not establish a blanket requirement of joint liability as a prerequisite to reallocation. Rather, it merely applied the established proposition that when only one defendant is liable on a judgment, that defendant's share cannot be reallocated among other tortfeasors who are not subject to the judgment.

O'Brien, 823 N.W.2d at 899 (emphasis in original). In 2003, the language of the joint-and-several liability statute was created to permit claims of "several" liability alone:

"When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each" Minn. Stat. § 604.02, subd. 1 (2003, 2010) (emphasis added). Reallocation under subdivision 2 is allowed to operate by its plain terms when "all or part of a party's equitable share of the obligation is uncollectible" Minn. Stat. § 604.02, subd. 2 (2003, 2010). An "equitable share of fault" is no longer limited to joint-and-several situations, but open to others including merely several liability situations.

In summary, therefore, the plain language of Minn. Stat. § 604.02, subd. 2, as currently enacted, does not require joint and several liability as a prerequisite to reallocation. Rather, the plain language of the statute permits reallocation whenever a party's equitable share of the obligation is uncollectible. The *O'Brien* court therefore held that the plain language of the statute makes reallocation an available remedy in the absence of joint-and-several liability. *Id.* at 899-900.

III. The Purpose of the Loss Reallocation Statute is to afford a Mechanism for a Plaintiff to More Fully Recover their assigned Damages from Collectible Defendants when another Party's Aliquot Fault is Uncollectible

The purpose of the loss reallocation statute was made clear shortly after the *Hosley* case. In *Imlay v. City of Lake Crystal*, 444 N.W.2d 594 (Minn. App. 1989), *aff'd*, 453 N.W.2d 326 (Minn. 1990), the court confronted a situation in which a defendant named Miller who had been allocated 20% of fault by a jury proved uncollectible. The matter was appealed before the trial court had made formal findings on uncollectibility, but the record showed that the uncollectible person was bankrupt, and thus uncollectible as a matter of law. The *Imlay* court explained:

we note that the proper procedure would have been to enter judgment against the city for 20% under [the joint-and-several liability statute,] Minn. Stat. § 604.02, subd. 1. Thereafter, the Imlays could have moved for reallocation of liability pursuant to [the loss reallocation statute,] Minn. Stat. § 604.02, subd. 2 Nevertheless, since the trial court has already found that Miller's estate is insolvent, we do not remand the case for adherence to the proper procedure.

Imlay, 444 N.W.2d at 601-02. The court was able to find the debt uncollectible as a matter of law and perform the loss reallocation directed by the statute.

If it were not obvious on the face of the loss reallocation statute itself, the *Imlay* decision makes clear that the purpose of the loss reallocation statute is to afford a mechanism for a plaintiff to more fully recover their assigned damages from a collectible defendant when another party's aliquot fault is uncollectible. So long as both "parties" are at-fault - - even if the uncollectible party was not formally named as "party" to the

lawsuit - - the collectible named party must pay the reallocated share of an at-fault but uncollectible non-party.

IV. If a Party's Share of Fault is Uncollectible, it is Reallocated to Other At-Fault Parties who are Collectible

The loss reallocation statute of Minn. Stat. § 604.02, subd. 2, provides that when a trial court determines that “all or part of a party’s equitable share of the obligation is uncollectible from that party,” the court is then mandated by the statute to “reallocate any uncollectible amount among the other parties . . . according to their respective percentages of fault.” Minn. Stat. § 604.02, subd. 2 (emphasis added).

As an aside, while here there was no fault allocated by the jury to the Plaintiff herself, the loss reallocation statute says that when such an eventuality does in fact occur, the reallocation “includ[es] a claimant at fault,” *id.*, so that the responsibility for paying the uncollectible damages is divided between all the remaining collectible at-fault parties including any at-fault Plaintiff. The loss reallocation statute also makes clear that the fact that a loss has been reallocated from one at-fault person to another, does not impair the right of the person paying more than their aliquot share of fault to seek a right of contribution - - should the uncollectible person eventually become collectible. *Id.* (“A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.”).

If a party’s share of fault is uncollectible, however, the loss reallocation statute makes clear and unambiguous that such uncollectible fault is reallocated to other at-fault

parties who are collectible.

V. Since Richard Staab is a “Party” for Purposes of the Loss Reallocation Statute, if his 50% Share of Fault is Uncollectible, it must be Reallocated to the Only Other At-fault Party: the Diocese of St. Cloud

Here the jury found 50% of the fault against Richard Staab - - even though he was not named as a formal party to the lawsuit - - and 50% of the fault against the Diocese. If Richard Staab is “uncollectible,” his fault would all be reallocated to the Diocese, under numerous prior applications of the statute by the appellate courts.

[I]f one party’s equitable obligation is uncollectible, another party may move for reallocation within one year of the judgment. [604.02], subd. 2. In that circumstance, the district court “shall determine whether all or part of a party’s equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault.”

Van Guilder v. National Freight, Inc., 686 N.W.2d 339 (Minn. App. 2004), *citing Hosley v. Armstrong Cork Co.*, 383 N.W.2d 289, 292-93 (Minn.1986). In *Gregor v. Clark*, 560 N.W.2d 744 (Minn. App.1997), the court of appeals held that “a court must reallocate all uncollectible obligations among tortfeasors who can pay,” and when the uncollectible party owed the same amount as a collectible entity, the uncollectible amount was allocated in full measure to the other equally at fault collectible party. *Id.* at 745.

The Supreme Court in *Staab* explained that both subdivisions 1 and 2 of §604.02 apply to the Diocese and to Richard Staab:

[O]ur decision in *Hosley* clearly contemplates assignment of equitable shares of an obligation to nonparty tortfeasors, but we did not read the phrase “shall reallocate” to imply the creation of an obligation enforceable

against nonparties where none would otherwise exist. Rather, we interpreted the statute to govern the extent of equitable shares apportioned to each party to the transaction. *Hosley*, 383 N.W.2d at 293. We therefore conclude that section 604.02 applies whenever multiple tortfeasors act to cause an indivisible harm to a victim, regardless of how many of those tortfeasors are named as parties in a lawsuit arising from that tort.

813 N.W.2d at 77.

Since Richard Staab is a “party” for purposes of the loss reallocation statute, if his 50% share of fault is uncollectible, it must be reallocated to the only other at-fault party: the defendant, Diocese of St. Cloud. This means that the Diocese would be responsible for paying 100% of the damages after the reallocation.

Any other construction would not make sense as for a different result to apply, “parties” would have to mean something different in subdivision 1 than in subdivision 2 of the same statute. Since nothing in the statute itself implies a different meaning, and since *Staab*, *Hosley*, and other Supreme Court precedents have expressly said that the terms have the same meaning, the result is clear: loss reallocation allows Richard Staab’s fault to be reallocated to the Diocese, if Staab is “uncollectible.”

VI. Damages are “Uncollectible” under the Loss Reallocation Statute when the Plaintiff Could Not Collect them against that Party

The statute dictates the procedure for determining uncollectibility:

The reallocation provision establishes the procedure by which a trial court can determine uncollectibility. A motion must be made to the court no later than one year after judgment is entered, requesting allocation. The trial court then must find that the judgment, at that time, is uncollectible.

Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 294 (Minn. 1986). The term

“uncollectible” is not defined in the statute, and under standard principles of statutory construction, should be given its “plain meaning.”

“Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and we apply the statute’s plain meaning.” *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007); *see also* Minn. Stat. § 645.16 (2010) (directing that, when the language of a statute is “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit”).

Fundamental to whether a judgment is collectible by the plaintiff is whether the plaintiff has a judgment against the party. You can’t enforce a judgment against someone you haven’t sued. Plaintiff did not sue Richard Staab and no one impleaded him as a party. There is no judgment against Richard Staab, so that part of the judgment is *ipso facto* not collectible. That is what the trial judge held here, and found as fact that the judgment was uncollectible.

Findings made by trial courts are entitled to deference under a “clearly erroneous” standard. Minn.R.Civ.P. 52.01 (an appellate court will not set aside a trial court’s findings of fact unless they are clearly erroneous); *see Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999). As Judge Richard Posner once put it, “To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must strike us as wrong with the force of a five-week-old, unrefrigerated dead fish.” *Parts and*

Elec. Motors, Inc. v. Sterling Elec., Inc., 866 F.2d 228, 233 (7th Cir.1988), *cert. denied*, 493 U.S. 847 (1989).

If you can't legally get money from someone, they are "uncollectible" to you. The trial court's ruling is sound. "Uncollectible" means that the plaintiff could not collect against the party. Here, Plaintiff could not collect the judgment against Richard Staab, so he is "uncollectible" as a matter of law, and his aliquot share of fault must be reallocated to the Defendant Diocese.

VII. The Uncollectible Judgment against Richard Staab is Properly Reallocated to the Diocese under the Loss Reallocation Statute

This outcome was anticipated by the dissent in the supreme court decision in *Staab*, which questioned why the majority was going to all the trouble of limiting the plaintiff's recovery against the named defendant under the joint-and-several liability statute, when she could move the next day to reallocate to the Diocese the share of the fault not already allocated to them, upon a finding that she could not collect against a non-party she had not sued and against whom she held no enforceable judgment:

The majority interprets the term "party" in subdivision 2 to mean "all persons who are parties to the tort, regardless of whether they are named in the lawsuit." Applying that meaning of "party" here, Richard Staab is a party to the tort whose "equitable share of the obligation is uncollectible," Minn. Stat. § 604.02, subd. 2, because he cannot be required to contribute to the judgment. Upon motion, the district court would be required to reallocate that uncollectible amount to the Diocese. *See id.* Accordingly, the majority's interpretation of subdivision 2 undoes the effect of its interpretation of subdivision 1.

Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 84 (Minn. 2012) (Meyer, J., dissenting).

The trial court agreed with Justice Meyer's cogent analysis.

The outcome reached by the trial court here is the proper one under Minnesota law as construed by the Minnesota Supreme Court for the past 25 years and as restated in April of 2012. The uncollectible judgment against Richard Staab must be reallocated to the Diocese.

VIII. Practical Suggestion: Culpable Persons Should Be Named as Parties

The genesis of the Appellant Diocese's legal issue is a tactical decision it voluntarily made as part of its trial strategy: to ask that Richard Staab's fault be compared, yet not to join him as a named party defendant.

One must be careful what they wish for, lest they get it. In future, the situation presented here is avoided if a tortfeasor in the position of the Diocese merely elects to join any co-tortfeasor as a party. The practical effect of joinder would not only be to make that co-tortfeasor a formal party, but in most injury litigation would trigger a duty on the part of their liability insurer to defend and indemnify them.

This approach would afford a source of collectible compensation and avoid the unique result in this case. This observation may be worthy of remark in the court's decision here as guidance to the bar.

CONCLUSION

Since joint-and -several liability is not a prerequisite to operation of the loss reallocation statute after 2003, the trial court properly applied the long-standing interpretation of “party” to the loss reallocation statute, which had been re-articulated by supreme court in *Staab*. The trial judge’s reallocation of Richard Staab’s fault to the Diocese was the correct application of § 604.02, subd. 2, and should be affirmed.

Respectfully Submitted,

Dated: _____

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