

No. A12-1575

A12-1972

STATE OF MINNESOTA

IN SUPREME COURT

Alice Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant,

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. JOINT LIABILITY IS A PREREQUISITE FOR REALLOCATION.

Respondent Staab and the Diocese agree on one important premise: joint liability is required for reallocation. The Diocese presented various reasons why a severally liable defendant is not subject to reallocation based on the definition of several liability, the statutory language, the legislative history of the statute, and the pertinent case law, among others. Respondent does not refute or oppose any of these arguments.

Respondent does not dispute the fact that by definition, a severally liable defendant must only pay its equitable share of an award, and no more. The entire concept of several liability is negated when a severally liable party is forced to pay more than its fair share of an award. Respondent has offered no argument to the contrary.

Respondent has offered no interpretation of the statutory language that would allow reallocation of a judgment to a severally liable party. The plain language of the statute directs reallocation may occur where there is a singular judgment that is shared by more than one party. Minn. Stat. § 604.02 subd. 2. A judgment is only shared by more than one party when the parties are jointly liable for that judgment. Respondent has offered no opposing interpretation.

Respondent does not provide any legislative history to suggest the statute applies to severally liable parties. The Legislature enacted the reallocation statute to protect defendants from the harsh results of joint liability. Hosley v.

Armstrong Cork Co., 383 N.W.2d 289 (Minn. 1986) (“Hosley I”). Under a scheme of joint liability, a plaintiff has the right to enforce the full measure of a judgment against any one jointly liable defendant, allowing a plaintiff to choose who among multiple defendants must “pick up the tab” when one tortfeasor cannot pay. The reallocation statute provides a procedure by which a particular jointly liable defendant – who is obligated to pay up to 100% of a judgment – may ensure a plaintiff seeks recovery not just from him, but from all jointly liable defendants. Conversely, a severally liable defendant is obligated to pay only its fair share, and therefore are not faced with the problem that the statute was designed to address. Because a severally liable party should never pay more than its fair share in the first instance, reallocation simply does not apply to severally liable parties.

Respondent has not cited to a single case that holds or suggests reallocation is applicable to a severally liable party. The Minnesota Court of Appeals in Eid v. Hodson, Hahn v. Tri-Line Farmers Co-op and Newinski v. Crane, and the Minnesota Supreme Court in Hosley v. Armstrong Cork Co. have applied the reallocation statute only to jointly liable parties. Eid, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994); Hahn, 478 N.W.2d 515 (Minn. Ct. App. 1991); Newinski, A08-1715, 2009 WL 1752011 (Minn. Ct. App. June 23, 2009) (unpublished) (AA-144—AA-152); Hosely I, 383 N.W.2d at 290. The Courts in Eid and Hahn declined to apply the reallocation statute where the defendants were severally liable. Id.

The statutory language, the legislative history and the pertinent case law all collectively support a holding that severally liable defendants are not subject to reallocation. Respondent does not refute these conclusions. Respondent also does not dispute the Minnesota Supreme Court's holding in Staab II that the Diocese is severally liable as defined by Minnesota Statute § 604.02 subd. 1.

It is undisputed that severally liable parties are not subject to reallocation. The Diocese is a severally liable party. Therefore, the Diocese is not subject to reallocation.

II. MINNESOTA STATUTE §604.02 MODIFIED THE COMMON LAW RELATED TO A TORTFEASOR'S LIABILITY TO PAY DAMAGES UNDER ALL CIRCUMSTANCES.

Respondent advances two arguments about the joint and several liability statute: (1) that the joint and several liability statute applies to Mr. Staab as “a party to the transaction” resulting in injury to Ms. Staab;¹ and (2) the Diocese is statutorily severally liable “for purposes of subdivision 1” but is jointly and severally liable pursuant to the common law “for purposes of subdivision 2.” The first argument requires the Court to consider the language of the joint and several liability statute as a whole and interpret the terms and provisions in subdivisions 1 and 2 so as to be harmonious and workable within the complete statutory scheme. Respondent's second argument asks the Court to do the exact opposite.

¹This conclusion is neither consequential nor dispositive of any issues before this Court. The mere fact that Mr. Staab was one of the tortfeasors who caused injury to Ms. Staab says nothing about whether the Diocese, as a severally liable party, must pay more than its fair share; nor does it establish that Mr. Staab was subject to a judgment, or that the “judgment” was uncollectible.

In advancing her first argument, Respondent cites to this Court's decisions in Staab II and Hosely I which interpret the meaning of the word "person" as it is used in subdivision 1 and the meaning of the word "party" as it is used in subdivision 2. Staab II, 813 N.W.2d at 76; Hosely I, 383 N.W.2d at 293. The Hosely I Court reviewed the joint and several liability statute in its entirety and held that the term "party" in subdivision 2 means "a party to the transaction." Id. The Staab II Court again looked at the statute in its entirety and concluded that because the word "party" in subdivision 2 means parties to the transaction, it logically follows that the word "persons" in subdivision 1 also means "all parties to the transaction." Respondent, relying on the statutory language as a whole, argues that Richard Staab is a "party to the transaction" and therefore subject to both subdivisions 1 and 2 of the statute. (R. Br. p. 8).

Next, the Respondent's analysis does an about-face. In advancing her second argument Respondent submits the Court should no longer read the statute as a whole. Instead, Respondent suggests the Court should now ignore the language of subdivision 1 which expressly states the Diocese is severally liable, and should instead apply the common law principle of joint and several liability for purposes of reallocation. Respondent suggests the Court apply the common law in lieu of the statutory language and despite the Legislature's unambiguous modification of the common law to limit joint liability to four circumstances – none of which apply in this circumstance.

Respondent suggests this interpretation is a product of strict construction of the statutory language. (R. Br. p. 8). Although the rule of strict construction is applied to a statute in derogation of the common law, it should nevertheless be construed sensibly and in harmony with the purpose of the statute so as to advance and render effective such purpose and the intention of the legislature. Maust v. Maust, 23 N.W.2d 537, 540 (Minn. 1946). The strict construction should not be pushed to the extent of nullifying the beneficial purpose of the statute, or lessening the scope plainly intended to be given thereto. Id.

Minnesota statute § 604.02 - including both subdivision 1 and 2 - was enacted in 1978 as a comprehensive statutory scheme with the purpose of modifying common law joint and several liability. Staab II, 813 N.W.2d at 73. Not only have the courts historically read subdivisions 1 and 2 as a whole to aid in interpreting the statutory language, but from 1988 to 2003 subdivision 1 contained a direct reference to subdivision 2 of the statute, stating that a minimally at fault tortfeasor's liability was to be capped at four times his allocation of fault including any amounts reallocated under subdivision 2. Minn. Stat. § 604.01 subd. 1 (1988). Subdivisions 1 and 2 of the statute are not unrelated pieces of legislation passed in isolation – rather they are two parts of the same collective effort of the Legislature to narrow the scope of joint liability.

Respondent concedes the Diocese is severally liable, but suggests this designation is “only for purposes of subdivision 1.” (R. Br. p. 9). The purpose of subdivision 1 is to establish which persons are severally liable and which persons

are jointly liable. Minn. Stat. § 604.02 subd. 1. The statute has no other substantive purpose. Id. The Legislature did not seek to categorize persons as severally liable or jointly liable for categorization sake alone. The Legislature meant for the designation of “severally liable” and “jointly liable” to mean something – namely how much a tortfeasor has to pay in damages. The reallocation statute dictates how much a tortfeasor has to pay in damages when a co-tortfeasor cannot or will not pay. The Courts have simply never looked to the common law when applying the reallocation statute and there is no legal support for doing so.

This Court’s holding in Staab II in fact rejects Respondent’s argument regarding the survival of common law joint and several liability. This Court held:

[W]e conclude that the 2003 amendments to the statute clearly indicate the Legislature’s intent to limit joint and several liability to the four circumstances enumerated in the exception clause, **and to apply the rule of several liability in all other circumstances.** In order to give effect to this intent, the statute must be interpreted to apply **in all circumstances** in which a person would otherwise be jointly and severally liable at common law, and a person is liable at common law at the moment the tort is committed.

Id. at 78. [emphasis added.] Respondent suggests the Diocese and Richard Staab were jointly and severally liable at common law because their actions combined to injure Ms. Staab and the common law supersedes the statutory language. (R. Br. pp. 7-8). The converse is actually true. The Diocese and Richard Staab’s liability arose at the time of the tort, but the enforcement of that liability is governed by the joint and several liability statute. In order to give effect to the

Legislature's intentions in limiting the burdens of joint liability, the statute must be applied in all circumstances in which a person would otherwise be jointly and severally liable at common law. Respondent's argument that the Diocese should be subject to common law when applying a statute that modified the common law is illogical and contrary to the intentions of the Legislature in enacting the statute.

III. THE DIOCESE DID NOT STIPULATE THAT RICHARD STAAB'S EQUITABLE SHARE WAS "UNCOLLECTIBLE" AS A MATTER OF LAW.

Respondent alleges the Diocese stipulated that "Richard Staab's equitable share of the obligation is uncollectible." (R. Br. p. 12). The Respondent cites to the trial court order in support of this allegation. Both the District Court and Respondent conflate the factual question pertaining to Richard Staab's ability to pay with the separate legal question regarding whether a judgment is "uncollectible." The written submissions to the District Court and the Court of Appeals clearly demonstrate two things. First, there is no discussion or debate in the written submissions from a factual standpoint about Richard Staab's financial resources or ability to pay sums of money. (AA-52 - AA -123). Aside from representations from Respondent's counsel, there is no discussion, argument or evidence relating to Richard Staab's solvency or insolvency. Id. The question of solvency was simply not in dispute and for purposes of Respondent's motion for reallocation if not expressly, was at least implicitly, conceded.

Second, and most importantly, the written submissions to the District Court demonstrate that the issue of whether a judgment could be collected from Richard Staab as a matter of law was indeed in dispute. (See e.g. AA-118 arguing “the judgment in this case is for 50% of the jury’s award. Furthermore, the only judgment is against Defendant. There is no judgment against Richard Staab and ever if there was a judgment, it would not be enforceable because Richard Staab was not a party to the case.” Hurr v. Davis, 193 N.W.2d 943, 944 (1923); and arguing “there is no portion of the judgment that is uncollectible.”) Additionally, the District Court’s Order and Memorandum acknowledges the Diocese’s position that there is no uncollectible judgment against Richard Staab to be reallocated. (A. Add.-04). Contrary to Respondent’s assertions, the issue of whether a judgment can be entered against a non-party and whether the lack of such judgment met the statutory standard of “uncollectibility” for purposes of reallocation was, and remains, in dispute.

IV. THE ISSUES RAISED BY THIS APPEAL COULD NOT HAVE BEEN AVOIDED BY THIRD-PARTY PRACTICE.

Respondent suggests that the issues presented in this appeal could have been avoided had the Diocese asserted a third-party claim against Richard Staab and sought contribution from him. (R. Br. p. 18-12). Even if Richard Staab were a party to this lawsuit, the Diocese would still be 50% at fault and therefore severally liable. Staab II, 813 N.W.2d at 80. Presumably, Richard Staab would have asserted, as Respondent did here, that he did not have the financial

resources to pay the judgment against him, and so Respondent would have sought to have Richard Staab's judgment reallocated to the Diocese. The Diocese's several liability is rendered meaningless the moment the Diocese is asked to pay more than its fair share, regardless of whether the person who cannot or will not pay their equitable share is a party to the lawsuit. Adding Richard Staab as a party to this matter would not have avoided this circumstance.

CONCLUSION

For these reasons and the reasons stated in Appellant's principal brief, the decisions of the Court of Appeals and the District Court should be reversed.

QUINLIVAN & HUGHES, P.A.

Dated: _____

8/29/13

By: _____



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The undersigned, being first duly sworn, says that on August 30, 2013, (s)he served **two copies** of the attached **Appellant's Reply Brief** on the following person(s):

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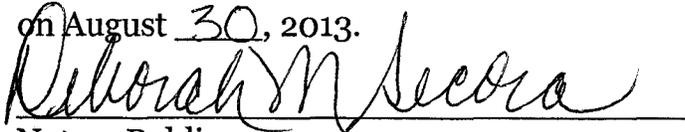
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