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NO. A06-1235

State of Minnesota
In Supreme Court

Chong Suk Perry,

Appellant,

vs.

Auto Owners Insurance Company,

Respondent.

BRIEF OF AMICUS CURIAE MINNESOTA ASSOCIATION FOR JUSTICE

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INTRODUCTION

This Court granted Amicus Minnesota Association for Justice's (Minnesota Justice)[1] request to address the survivor's economic loss issue. Minnesota Justice submits this brief on behalf of many Minnesotans who possess and will possess survivor's economic loss claims arising out of Minnesota Statutes §65B.44, subd. 6. If the Minnesota Court of Appeals' decision is affirmed, Minnesotans who depended upon deceased motor vehicle accident victims and who do not fall within the presumed class of dependents set forth in the statute and who cannot obtain survivor's benefits under a no-fault insurance policy will be "shut out" from proving their dependency under the statute. Said another way, the lower court's decision effectively ignores the No-Fault Act's stated remedial purpose of relieving the severe economic distress of uncompensated motor vehicle accident victims. Minn.Stat. §65B.42(1). Minnesota Justice leaves to Appellant those arguments that are specific to this case. This brief addresses the overriding public concerns associated with the short-sighted holding of the court of appeals.

[1] Pursuant to MRCAP 129.03, Counsel for neither party participated in the authorship of this brief. No one other than Minnesota Justice made a monetary contribution to the preparation of this brief.

ISSUE

The No-Fault Act (Act) Is Remedial And Designed To Be Read Broadly To Accomplish Its Purpose Of Relieving The Severe Economic Distress Of Uncompensated Injured Motor Vehicle Accident Victims. Minnesota Statutes §65B.44, Subd. 6, Sets Forth A Class of Presumed Dependents, Implying The Existence Of Another Class Of Non-Presumed Dependents. Should This Court Recognize the Statute's Implication And Read The Statute Broadly To Find Another Class Of Non-Presumed "Provable" Dependents?

1. The Statute

Minnesota Statues section 65B.44, subd. 6, identifies a class of presumed dependents of a deceased motor vehicle accident victim. The class includes:

(a) A wife is dependent on a husband with whom she lives at the time of his death;

(b) A husband is dependent on a wife with whom he lives at the time of her death;

(c) Any child under the age of 18 years or who is over the age of 18 but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent.

Minn.Stat. §65B.44, subd. 6. The Minnesota Court of Appeals' decision limits those who may recover survivor's benefits to these dependents, persons absent broader language in an applicable no-fault policy.

2. Real Life Examples Of Dependents Who Have Been Shut Out By The Court Of Appeals' Decision.

If the court of appeals is not reversed, many Minnesotans will not be permitted to prove their dependency under the statute. For instance, a 92 year old home-bound widow who depends upon her daughter for grocery shopping and other errands will not be entitled to prove her dependency should the daughter die in a motor vehicle crash. Similarly, a husband who lives away from his wife in a group facility for medical reasons and who financially depends on his wife will not be entitled to prove his dependency if the lower court's holding stands. Finally, a 21 year old college student who is not incapacitated and who relied upon her deceased parent for tuition money will not be permitted to prove her dependency under the statute. In other words, if the stated examples do receive survivor's benefits, their benefits will derive from an applicable no-fault policy, not because the statute triggers the opportunity to prove dependency. Minnesota Justice submits that the legislature did not intend that thousands of dependent

Minnesotans be left to the mercy of the language in their no-fault policies for the recovery of survivor's benefits.

3. Discussion

Minnesota Justice contends that §65B.44, subd. 6, creates two classes of survivors economic loss beneficiaries: (1) presumed dependants as set forth above and (2) "non-presumed" or "provable" dependents, also set forth in the statute:

> Questions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased.

Minn.Stat. §65B.44, subd. 6.

Contrary to the court of appeals' holding, the statute does not define dependents, it simply sets forth an evidentiary standard by identifying a class of presumed dependents. The legislature's numeration of presumed dependents implies that a second class of non-presumed provable dependents may exist when an automobile accident victim dies. This Court seemed to recognize this implication in *Peevy v. Mutual Services Cas. Ins. Co.,* 346 N.W.2d 120 (Minn. 1984):

> This language implies that in addition to persons presumed to be dependent, there are other cases of dependency which should be decided as fact questions. There is no language in the statute itself which prohibits a finding that an ex-spouse is in fact

> dependent and thus entitled to survivor's economic loss benefits.

Peevy, 346 N.W.2d at 122.

When the court of appeals refused to recognize the second class of non-presumed survivors who should have opportunity to prove their dependency, it effectively rendered the last sentence of paragraph two in section 65B.44, subd. 6, a nullity. Why would the legislature say that certain persons (some husbands, wives, and children) are presumed dependents and then go on to say that questions about the existence and extent of dependency shall be questions of fact if the legislature did not intend to create a second, non-presumed but provable category of dependents?

The only rational explanation for the presence of the last sentence of the second paragraph in section 65B.44, subd. 6, is to expand the group of potential claimants to others who can prove dependency or to narrow the pool of claimants by stating that a spouse or child who lived with decedent at the time of his/her death will not be entitled to survivor's economic loss benefits, absent proof of real dependency. If the court of appeals decision stands, certain spouses and children will not be permitted to prove

dependency under the statute. This is an absurd result in contravention of Minnesota Statutes section 645.17(1).

This court addressed a similar issue in *Peevy v. Mutual Service Cas. Ins. Co.*, 346 N.W.2d 120 (Minn. 1984). There, decedent's former spouse who was actually dependent on decedent sought survivor's benefits under the statute. The Court permitted the former spouse to prove her dependency because the applicable no-fault policy defined "survivor" as "any other person dependent upon the insured at the time of the insured's death." 346 N.W.2d at 123. Because the policy contemplated provable dependents beyond the statutory class of presumed dependents, the Court declined to interpret the last sentence in the second paragraph of subdivision 6.

Before this Court declined to interpret the statute however, it thoroughly discussed two possible meanings of the statute. The Court stated that the disputed sentence could indicate an intent by the legislature to create an open category of dependents other than those persons presumed to be dependent. It reasoned that if dependency is limited to the presumptive class, there would be no need for further inquiry into the existence of dependency. 346

N.W.2d 122.[2] This Court also noted that the statute's legislative history supported such an interpretation. Minnesota Justice will not reiterate that history here but refers the Court to its own thorough discussion about the statute's history. *Peevy,* 346 N.W.2d at 122.

This Court noted that the other possible reading of the statute is that the surviving dependents under the no-fault statute are limited to the three persons in the presumed class. *Peevy,* 346 N.W.2d at 122. Such an interpretation however, raises the obvious question of why the legislature would eliminate certain persons from the possibility of proving dependency. For instance, why would the legislature preclude a surviving spouse who did not live with decedent spouse at the time of death from proving his/her dependency?

While it is not always advisable to turn to another statutory scheme for guidance about the meaning of a different statute, a look at Minnesota's dram shop statute may be helpful. The statute provides that a spouse, child, parent, guardian, employer, or "other person" who suffers a loss of means of support or other pecuniary

[2] Minnesota Statutes section 645.16 provides that, when construing a statute, a court shall as much as possible, give effect to all of the statute's provisions. The court of appeals disregarded this rule of statutory construction when it effectively eliminated the need for a factual inquiry into the existence of dependency as required by the statute.

loss by the intoxication of another person has a right of action in that person's own name for damages sustained against a person who caused the intoxication. See Minn. Stat. §340A.801, subd. 1. This Court held that the term "other person" in the statute includes a fiancee and the fiancee's daughter so long as they could show that they suffered a loss of support or other pecuniary loss because of the fiance's injury. See *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn. 1998). Permitting a survivor who does not fall within the presumed class to prove dependency in an effort to recover survivor's benefits seems to be analogous to permitting a fiancee to recover under the dram shop act as an "other person."

4. How Far Does The Non-Presumed "Provable" Class Reach?

As with any rule, once it has been articulated, advocates may seek to stretch the rule in an effort to fulfill the goals of others not contemplated by the rule. While this Court could limit the holding in this case to its individual facts, the Minnesota Supreme Court often reviews civil cases to provide guidance to litigants, judges and attorneys beyond the parameters of the individual case. This judicial reality begs the question, "If this Court holds that the statute recognizes a second class of non-presumed provable dependents, how far will that class reach?" Minnesota Justice respectfully suggests that the non-presumed

provable class will reach to any person who can prove to their no-fault claims adjuster, a judge, a jury or a no-fault arbitrator that they were dependent upon the decedent. This is a just result which will fulfill the purposes of the No-Fault Act and a result that is consistent with the statute's legislative history.

CONCLUSION

For all of the reasons set forth here, Minnesota Justice urges the Court to reverse the lower court by holding that the statute contemplates a second class of non-presumed provable dependents.

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 1,976 words. This brief was prepared using Microsoft Word 2003.

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