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NO. A05-1038

State of Minnesota
In Court of Appeals

Ted Harrison, Jr., a minor, by
Audrey Harrison, his guardian ad litem,

Respondent,

v.

Amy and Ted Harrison, Sr.,

Appellants.

APPELLANTS' REPLY BRIEF

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I. THE PROVISIONS OF MINN. STAT. § 169.685 MUST BE READ AND CONSTRUED IN THEIR ENTIRETY; IF SUBDIVISION 4(B) PERMITS A CLAIM ON THESE FACTS, SUBDIVISION 4(A) HAS NO MEANING.

This is a lawsuit for personal injury damages resulting from the use, or failure to use, or installation, or failure of installation of a car seat in an automobile accident. The parties agree that generally, evidence about the use, failure of use, installation, or failure of installation of car seats and seat belts is not admissible in personal injury litigation resulting from an auto accident. This is the general rule set forth in Minn. Stat. § 169.685, subd. 4(a). This rule existed and operated for thirty-six years before the Legislature enacted an exception, now codified in subdivision 4(b). The Legislature did not enact the exception in a vacuum; it created a narrow exception that must be read and interpreted in concert with and in the context of the rule it modifies in subdivision 4(a). Statutes must be interpreted so that no word, phrase, or sentence is made superfluous, void, or insignificant. See State v. Larivee, 656 N.W.2d 226, 229 (Minn. 2003).

This is where Respondent's argument fails. Respondent argues under the exception in 4(b), evidence of the use, failure of use, installation, or failure of installation of a car seat is always admissible so long as the incident somehow arose out of an incident that involved an allegedly defectively designed, installed, manufactured, or operated car seat or seat belt. If it is true, as Respondent argues, that a plaintiff need only to invoke the specter of a defectively installed or operated car seat or seat belt in order to invoke the exception, in what case will the general rule apply to situations involving car seats? Every car seat is installed

or operated by some person that is not the manufacturer or designer. As such, under Respondent's view, every such person would be vulnerable to a lawsuit, in contravention of the long history of the seat belt gag rule and the provisions of Section 169.685.

For any lawsuit such as this one, where the claim is that a parent negligently installed or used the car seat, the exception will be invoked if Respondent's view is accepted. But the factual situation here – a child suing his parents for personal injuries resulting from improper use or installation – is precisely the general rule contained in subdivision 4(a). If it does not apply here, when could it apply? And if it does not apply anywhere, the exception swallows the rule. Respondent fails to address this argument in any way. He does not deny that under his interpretation, evidence that a person failed to use any car seat at all and used the regular seat belts would be admissible because it constituted a defective "installation" of a child restraint system. He similarly failed to respond to the other factual scenarios cited in Appellants' initial brief.

To keep the exception from swallowing the rule (as in the examples above), and to avoid an absurd result, this Court must interpret the exception narrowly by reading the provisions of subdivisions 4(a) and 4(b) together -- which means that the exception in subdivision 4(b) must be interpreted to apply to products liability claims only.

This interpretation of the text of the statute is the only way the plain language of the rule and its exception can both have meaning – the only way the

statute can be interpreted so that no word, phrase, or sentence is made superfluous, void, or insignificant. See Larivee, 656 N.W.2d at 229.

Respondent apparently agrees that the exception applies only in products liability cases – as Respondent's counsel argued below, "This statute is designed to preserve claims that arise out of a products liability setting...." T.17-18. And so Respondent argues that his claim against his parents qualifies under the statute's products liability exception. But this is not a products liability claim. There is no claim against a manufacturer or designer in this lawsuit.[1] To label this claim as one that qualifies under the products liability exception is a transparent fiction and perversion of the statute, crafted to preserve a claim that has been barred for decades. The exception simply does not apply to permit a claim against a parent for improperly cleaning or negligently installing a car seat.

II. TO THE EXTENT THAT THE COURT CANNOT DEDUCE THE STATUTE'S MEANING FROM ITS TEXT ONLY, OR THAT MEANING LEADS TO AN ABSURD RESULT, THE LEGISLATIVE HISTORY MAY PROVIDE PURPOSE AND INTENT.

Courts interpret statutes to ascertain and effectuate legislative intent. Minn. Stat. § 645.16. If there is no ambiguity in the language of the statute, courts should look to the plain meaning of that language. Tuma v. Comm'r of Econ. Sec., 386 N.W.2d 702, 706 (Minn. 1986). If, however, the statute is

[1] Regarding Respondent's arguments regarding whether the evidence of Appellants' negligence would be admissible were this a lawsuit in which the car seat manufacturer were sued in the same suit as the parents, that hypothetical question is academic and not properly before the Court. See Kopet v. Bearl, 289 Minn. 495, 497, 82 N.W.2d 833, 834 (Minn. 1970).

ambiguous or its literal meaning leads to an absurd result that is directly contrary to the Legislature's intent, courts may look beyond that plain meaning for other evidence of legislative intent. See Wegener v. Commissioner of Revenue, 505 N.W.2d 612, 617 (Minn. 1993).

The statute, read as a whole, clearly requires that the exception must have a limited meaning so the general rule in subdivision 4(a) retains meaning as well. However, to the extent that the Court cannot reconcile the meaning of the two subdivisions from the text alone, the circumstances under which they were enacted provide context for the words. The intention of the Legislature may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and 8) legislative and administrative interpretations of the statute. Minn. Stat. § 645.16.

As set forth in Appellants' initial brief, the Legislature enacted the exception in response to the Supreme Court's decision in Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997) – to allow "crashworthiness" claims against product manufacturers and designers. In enacting the exception, the Legislature rejected the Court's suggestion that the general rule be repealed in its entirety – indicating that they wished for the gag rule to stand, except in the

cases of "crashworthiness" product liability claims such as Olson. If the Legislature wanted to allow claims such as the one Respondent has brought, they could have repealed the general rule altogether. They did not. Instead, they retained the general prohibition on evidence of the use, failure of use, installation, or failure of installation of car seats in cases such as this one and crafted a limited exception for product liability claims.

This is patently clear by looking at the comments the bill's chief author, Senator Leo Foley, made in introducing the bill. He explained that the bill provided "an exception **in products liability cases** involving a defective seatbelt or passenger restraint systems." A.27-28 (emphasis added). Respondent criticizes Appellants' citation to legislative history and to Senator Foley's introduction of the bill, citing Handle With Care, Inc., v. Dep't of Human Services, 406 N.W.2d 518 (Minn. 1987), but in that very case the Supreme Court looked at the legislative history as well as testimony of the bill's sponsor to deduce the Legislature's intent. Id. at 522. As the Court noted, "[w]e should not turn a blind eye to what may be helpful and to what is before us." Id., citing Sterns-Hotzfeild v. Farmers Insurance Exchange, 360 N.W.2d 384, 389 (Minn. App. 1985). Further, the Court in Handle With Care specifically stated that "clear statements made by the bill's sponsor and those moving amendments" were helpful in ascertaining Legislative intent. Id. at 522. Here, Senator Foley was the bill's chief author. See 1999 Minn. Laws Ch. 106 § 1 (SF 303). As such, his comments must be given their due weight.

The circumstances under which Section 169.685 was amended, and the statements of Senator Foley clearly indicate that subdivision 4(b) was intended to be a narrow exception drawn for product liability claims only.

III. THIS CASE MUST BE ANALYZED AS THIS COURT ANALYZED MARSDEN V. CRAWFORD.

This case is most like Marsden v. Crawford, 589 N.W.2d 804 (Minn. App. 1999). There, a day care provider was carrying a three-year-old in the backseat of her car when it was struck from behind. Id. at 805-806. The child's mother brought a claim against the provider for failing to utilize a child restraint system. This Court held that the gag rule barred this evidence in support of the mother's action. Id. at 807. The statutory exception was enacted just after this Court decided Marsden. If the Legislature wanted to allow such claims, it could have repealed the gag rule entirely or broadened the exception they enacted. Because the claim and evidence in Marsden concerned the use or failure to use or installation or failure of installation of a car seat, the general rule, and not the exception, would apply.

Likewise, here the evidence Respondent seeks to introduce is of the use or failure to use, or installation or failure of installation of a car seat. Thus the general rule – and not the narrow exception carved out for product liability cases – must apply.

Because Section 169.685, subdivision 4(b) simply does not apply to a claim against a parent for improperly cleaning or negligently installing a car

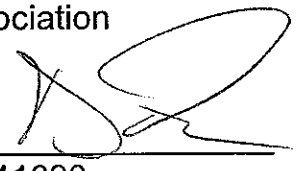
seat, the general rule applies, and Respondent's claim may not go forward. Accordingly, the district court's decision must be reversed.

CONCLUSION

Because the gag rule exception for product liability claims does not and should not apply to a claim for a parent's alleged error in placing a car seat into an automobile, Appellants Amy and Ted Harrison, Sr. respectfully request that the Court reverse the decision of the district court, rule that the car seat evidence is not admissible in this lawsuit, and order entry of judgment in their favor.

Respectfully submitted,

Lind, Jensen, Sullivan & Peterson
A Professional Association



Dated: September 12, 2005

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