

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.

BRIEF OF RESPONDENT

Kay Nord Hunt, #138289
Robert J. King, #55906
LOMMEN, NELSON, COLE &
STAGEBERG, P.A.
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 339-8131

Attorneys for Respondent

William L. Davidson, #201777
Brian A. Wood, #141690
Sara J. Lathrop, #0310232
LIND, JENSEN, SULLIVAN &
PETERSON, P.A.
150 South Fifth Street, Suite 1700
Minneapolis, MN 55402
(612) 333-3637

Attorneys for Appellants

TABLE OF CONTENTS

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE AND FACTS 2

 A. Statement of the Facts 2

 B. Statement of the Case 2

ARGUMENT 7

 A. Standard of Review 7

 B. Minn. Stat. § 169.685, subd. 4(b), is Clear and Unambiguous 7

 1. Absent Ambiguity, Only the Words of the Statute May Be
 Considered 8

 2. Subd. 4(b) Must Be Read and Construed In Its Entirety 9

 3. Only If Statute is Ambiguous May the Court Look
 Beyond Words of the Statute 12

 4. The Interpretation Placed on the Statute By the Trial
 Court Is In Accord with Legislative Intent and Does Not
 Lead to an Absurd Result 12

CONCLUSION 14

CERTIFICATION OF BRIEF LENGTH 15

TABLE OF AUTHORITIES

Statutes:

| | |
|--------------------------------------|--------|
| Minn. Stat. § 169.685, subd. 4 | passim |
| Minn. Stat. § 645.08(1) | 9 |
| Minn. Stat. § 645.17(7) | 8 |

Cases:

| | |
|---|----------|
| <u>Arlandson v. Humphrey</u> | 9 |
| 224 Minn. 49, 27 N.W.2d 819 (1947) | |
| <u>Faber v. Roelofs</u> | 10 |
| 311 Minn. 428, 250 N.W.2d 817 (1977) | |
| <u>Hamwright v. State</u> | 10 |
| 787 A.2d 824 (Md. App. 2001), <u>cert. denied</u> , 798 A.2d 552 (2002) | |
| <u>Handle with Care, Inc. v. Dep't of Human Services</u> | 8 |
| 406 N.W.2d 518 (1987) | |
| <u>Hare v. State, Dep't of Human Services</u> | 10 |
| 666 N.W.2d 427 (Minn. Ct. App. 2003) | |
| <u>In re Will of Kipke</u> | 12 |
| 645 N.W.2d 727 (Minn. Ct. App. 2002), <u>rev. denied</u> | |
| <u>Minnesota Citizens Concerned for Life, Inc. v. Kelley</u> | 7 |
| 698 N.W.2d 424 (Minn. 2005) | |
| <u>Olson v. Ford Motor Co.</u> | 8 |
| 558 N.W.2d 491 (Minn. 1997) | |
| <u>People v. Beyer</u> | 10 |
| 768 P.2d 746 (Colo. App. 1988) | |
| <u>Phelps v. Commonwealth Land Title Ins. Co.</u> | 1, 8, 12 |
| 537 N.W.2d 271 (Minn. 1995) | |

State v. Sebasky 8
547 N.W.2d 93 (Minn. Ct. App. 1996), rev. denied

Swelbar v. Lahti 1, 10
473 N.W.2d 77 (Minn. Ct. App. 1991)

Van Asperen v. Darling Olds, Inc. 1, 9
254 Minn. 62, 93 N.W.2d 690 (1958)

Other Authorities:

Webster's Third New International Dictionary 10

Webster's New World Dictionary (4th ed. 2001) 10

STATEMENT OF THE ISSUE

DOES THE EXCEPTION TO THE SEAT BELT GAG RULE, MINN. STAT. § 169.685, SUBD. 4(b), APPLY WHERE THE PLAINTIFF'S ACTION FOR DAMAGES ARISES OUT OF AN INCIDENT INVOLVING A DEFECTIVELY DESIGNED CAR SEAT?

The trial court held in the affirmative.

Van Asperen v. Darling Olds, Inc., 254 Minn. 62, 93 N.W.2d 690 (1958)

Swelbar v. Lahti, 473 N.W.2d 77 (Minn. Ct. App. 1991)

Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271 (Minn. 1995)

STATEMENT OF THE CASE AND FACTS

A. Statement of the Facts.

The parties, Appellants/Defendants Amy and Ted Harrison, Sr. (Defendants) and Respondent/Plaintiff Ted Harrison, Jr., a minor, by Audrey Harrison, as guardian ad litem (Teddy), stipulated to the facts for purposes of their cross-motions for summary judgment. (Appellants' Appendix [A.] 7.) The facts as set forth by Defendants are accurate and will not be repeated. Defendants did fail to include in their statement of facts what the Minnesota State Patrol states it observed at the scene of the accident.

At the accident scene, the Minnesota State Patrol observed the harness of Teddy's child seat to be unlatched. The child seat was strapped in the Defendants' vehicle through the use of the vehicle's seat belt. However, the child seat was tipped over to the left, away from the right rear passenger side window and door and in an orientation nearly horizontal to the Defendants' vehicle's rear seat. (A. 8; Finding of Fact 5; A. 14.)

B. Statement of the Case.

The narrow issue before the Court is the interpretation and application of Minn. Stat. § 169.685, subd. 4(b), to the unique facts of this case. Defendants argue that they were entitled to judgment as a matter of law on the grounds that Minn. Stat. 169.685, subd. 4(a), prohibits the introduction of "proof of the installation or failure of installation of seat belts or a child passenger restraint system." Plaintiffs contend that Defendants are not so entitled because the exception contained in Minn. Stat. § 169.685, subd. 4(b), applies to this case.

In their statement of the case Defendants have not set out verbatim the provisions of the statute at issue and their assertions as to the statutory language could more accurately be labeled argument.¹ Minn. Stat. § 169.685, subd. 4, states:

Subd. 4 - Admissibility into evidence. (a) Except as provided in paragraph (b), proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

(b) Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph.

(A. 23.)

This lawsuit is the last piece of litigation arising out of an automobile accident that occurred on April 19, 2001. (A. 13.) Defendants have agreed “that this case involve[s] a defective manufacture or design or installation as related to the settled claims against the manufacturer [of the car seat].” (Reply Memorandum of Law in Support of Defendants’ Motion for Summary Judgment.) Specifically, Teddy asserted that Century Products Co. (Century), the manufacturer of the car seat, was one of the parties responsible for his injuries. (T. 11/3/04, p. 3.) Century had alleged that Defendants were also to blame for

¹ Defendants do later set out the exception verbatim in their argument section of the brief. (Appellants’ Brief, p. 8.)

Teddy's injuries because of their improper installation of the car seat, specifically misapplication of the car seat belt system in restraining the car seat. (T. 3.) Century's argument was based on the State Patrol's observation that the car seat was leaning over toward the center of the car. (T. 4-5.) Also at issue was Defendants' failure to keep the car seat clean and free of foreign objects. (T. 4.) Teddy's case against Century was settled. Defendants were not parties to that lawsuit. (T. 3.)

After the settlement, this lawsuit was brought by Teddy against Defendants for improper installation of the car seat. (T. 4.) Defendants have agreed they were negligent "in the maintenance of Teddy's car seat, specifically, in the failure to discover and remove the coin from the buckle mechanism, and in the installation of the car seat into the Harrison vehicle, specifically, in the failure to convert the shoulder/lap belt restraint harness to the automatic locking mode and in the failure to confirm that the car seat's buckle tongue was securely latched into the buckle mechanism by pulling up adequately in the harness." (A. 16.)

Defendants conceded at the summary judgment motion hearing that in Teddy's lawsuit against Century, Century "would not have been precluded from pointing the finger, trying to point at the empty chair essentially of [Defendants] and saying that we can put in evidence that [Defendants] have misused this." (T. 15.) Defendants also acknowledged that Teddy could have asserted this action against Defendants in the action brought against Century:

And while Century could have pointed the finger at an empty chair and, perhaps, [Teddy] could have asserted this action in that case and we hear counsel say there was a whole host of reasons. I suspect one of these reasons is tactical.

In any event, it doesn't matter. They didn't assert those claims there.

(T. 16.)

As Defendants view the statute, Minn. Stat. § 169.685, subd. 4(b) only applies if the evidence against the Defendants was being presented in the product liability lawsuit against the manufacturer. So if Teddy's present claim against the Defendants had been joined in Teddy's lawsuit against the products manufacturer, evidence of the failure of installation of the child safety seat would have been admissible. (T. 15-16.)

To this assertion Teddy's counsel responded that the exception is not a joinder rule, it applies to this case and evidence of the Defendants' installation of the car seat is not barred.

Your Honor, I think I heard a concession that if the parents had been parties in the products liability claim, this claim could be made. And I want to point out to you one concept. I can't imagine that this statute is meant to be a joinder rule. The statute doesn't require a mandatory interpleader action or mandatory joinder. It has nothing to do with civil procedure. This statute is designed to preserve claims that arise out of a products liability setting and the statutory language talks about an action for damages arising out of an incident that involves defective products. It doesn't say action for damage against manufacturers of defective products or against sellers of defective products. It says claims arising out of incidents involving defective products because we know in the run of the mill products case, it is almost always the case that the

user of the product is going to go to the jury for their negligence.

(T. 17-18.) Teddy's counsel continued:

Here the parents would have gone to the jury even as non parties for their negligence. So, the Legislature was intending to try to preserve all of what would be the usual claims that you see in a products setting and to allow all of this evidence to come in so a jury could wade through it. . . . That is the only logical interpretation of this change in our law. And that doesn't swallow any rule.

(T. 18.)

The trial court ruled in Teddy's favor and granted Teddy's motion for summary judgment. (A. 18.) The trial court recognized that "[t]he core of the parties' dispute is whether the current action is one that arose out of an incident involving a defectively designed, manufactured, installed, or operating seat belt or child restraint system." (A.

17.) The trial court ruled that it did. The trial court explained:

As stipulated by the parties, Teddy's injuries were a result of a defectively designed child passenger restraint system, addressed in the underlying products liability case. A broad reading of the statute and its exception would indicate that the exception is triggered in this case simply by the involvement in this case of a defectively designed car seat. On its face, the statute requires nothing more than involvement to trigger the exception.

(A. 17.) The trial court concluded that "[n]either a plain reading of the statute nor case law" supported Defendants' assertion that "the exception to the gag rule" for defective installation "is limited to product liability claims against designers, manufacturers,

distributors, and retailers of child passenger restraint systems.” (A. 17-18.) The trial court continued:

Moreover, had the legislature intended for the exception to apply only to products liabilities claims and to afford no benefit to consumers, this Court thinks it could have plainly stated that intention.

(A. 18.)

Upon entry of final judgment, Defendants brought this appeal.

ARGUMENT

APPLYING THE FACTS OF RECORD TO MINN. STAT. § 169.685, SUBD. 4(b), RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT.

A. Standard of Review.

Teddy agrees with Defendants that the construction of statutory provisions is a question of law, which this Court reviews de novo. Minnesota Citizens Concerned for Life, Inc. v. Kelley, 698 N.W.2d 424, 427 (Minn. 2005.)

B. Minn. Stat. § 169.685, subd. 4(b), is Clear and Unambiguous.

While Teddy does not disagree with the basic rules of statutory construction as set forth in the last paragraph of page 10 of Defendants’ brief, Teddy does disagree with Defendants’ application of those basic rules to the plain language of Minn. Stat. § 169.685, subd. 4(b).

1. **Absent Ambiguity, Only the Words of the Statute May Be Considered.**

While claiming the statute to be clear and unambiguous, Defendants nonetheless began their argument by quoting from a comment made by one state legislator and by reciting the facts of the Supreme Court's decision in Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997), a case decided before the exception at issue was enacted. Only when statutory wording is ambiguous may contemporaneous legislative history, among other factors, be considered. Minn. Stat. § 645.17(7); Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274 (Minn. 1995).

As this Court has stated, it cannot "substitute [a] proposed interpretation based on legislative history, but must effectuate the legislature's intent expressed in its clear choice of words." State v. Sebasky, 547 N.W.2d 93, 100 (Minn. Ct. App. 1996), rev. denied. In other words, courts are prohibited from reading into clear statutory language a restriction that the Legislature itself did not include.

Moreover, as the Minnesota Supreme Court has admonished, "selective use of statements made in the give-and-take of the legislative process is also risky." Handle With Care, Inc. v. Dep't of Human Services, 406 N.W.2d 518, 522 n.8 (1987). It has been described as "akin to looking over a crowd and picking out your friends." Id. (quotation and citation omitted).

2. Subd. 4(b) Must Be Read and Construed In Its Entirety.

Subd. 4(b) states that Minn. Stat. § 169.685, subd. 4(a), the seat belt gag rule, “does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed or operating seat belt or child passenger restraint system.” (Emphasis added.) One of the cardinal rules of statutory construction is that the statutory provision at issue is to be read and construed as a whole so as to give effect to all of its parts. Van Asperen v. Darling Olds, Inc., 254 Minn. 62, 73-74, 93 N.W.2d 690, 698 (1958). But Defendants focus on only part of Minn. Stat. § 169.685, subd. 4(b), specifically the phrase “defectively designed, manufactured, installed, or operating seat belt or child passenger restraint systems.” Their brief wholly ignores the beginning of the sentence in which the phrase they focus on is contained. Rather than skip over portions of the statutory provision at issue as Defendants would have this Court do, the Court necessarily must begin by examining subd. 4(b) in its entirety.

Words and phrases are to be construed according to rules of grammar and according to their common and approved usage. Minn. Stat. § 645.08(1); see also Arlandson v. Humphrey, 224 Minn. 49, 55, 27 N.W.2d 819, 823 (1947) (“unless obviously used in a different sense, words in a statute are to be construed in their ordinary, popular sense, -- according to the common and approved usage of the language”). The phrase “arising out of” is a phrase commonly used by the Legislature and has been subject to a uniform interpretation by the Minnesota Supreme Court.

Because of this, the Legislature's choice of the phrase "arising out of" is significant. One can presume that in drafting legislation the Legislature chose the phrase "arising out of" with full knowledge of its prior judicial interpretation. Hare v. State, Dep't of Human Services, 666 N.W.2d 427, 431 (Minn. Ct. App. 2003). The Minnesota Supreme Court has held that the phrase "arising out of" is not to be construed to mean "proximately caused by" and that the phrase is much broader than proximate cause. The words "arising out of" mean causally connected with, not "proximately caused by." Faber v. Roelofs, 311 Minn. 428, 436, 250 N.W.2d 817, 822 (1977).

The word "incident" means "a series of acts committed in close proximity or a chain of events forming a part of a schematic whole." Hamwright v. State, 787 A.2d 824, 831 (Md. App. 2001), cert. denied, 798 A.2d 552 (2002), citing to the definition as set forth in Webster's Third New International Dictionary; People v. Beyer, 768 P.2d 746 (Colo. App. 1988) (same).

"Involved" has been defined as "implicated" or "affected." Webster's New World Dictionary (4th ed. 2001). It was the definition of the term "involving" that was used in the predecessor version of Minn. Stat. § 169.685, subd. 4. Swelbar v. Lahti, 473 N.W.2d 77 (Minn. Ct. App. 1991). (A. 19.)

In Swelbar, a child who died was not restrained in a car seat, but was being carried on her mother's lap. Id. at 78. In the resulting wrongful death action, the defendant sought to introduce into evidence that the mother was statutorily required to use a car seat for the child. Id. Plaintiff sought to exclude that evidence. Id. This Court agreed with

plaintiff's position based upon the language of § 169.685, subd. 4, focusing on the word "involving" in the statute. This Court stated:

Here, the statute unambiguously bars evidence of use or nonuse of seat belts or child restraints in any litigation "involving" personal injury resulting from use of a motor vehicle. . . . What is more important however, is that the prohibition against the use or nonuse of a child restraint system refers to litigation involving personal injuries, not litigation for personal injuries.

Id. at 79 (emphasis in the original).

Turning to the phrase "a defectively designed, manufactured, installed or operating seat belt or child passenger restraint system," Teddy does not dispute that the word "defectively" modifies the word "installed" or "operating." Nor does Teddy dispute Defendants' definition of defective as "imperfect in form or function."

Applying the statute as written, the statutory exception permits the introduction of evidence as to Defendants' conduct in the installation of the car seat. This case is an action for damages arising out of an incident that involves a defectively designed car seat. Defendants have stipulated to that fact. Defendants have also conceded that they failed to convert the shoulder/lap belt restraint harness to the automotive locking mode and failed to confirm the buckle tongue was properly latched.² (A. 10.) The defect in the manufacture/design of the car seat by Century coupled with Defendants' improper

² Defendants incorrectly state on page 15 of their brief that all they did was fail to properly clean the car seat. They have stipulated to negligence in the installation of the car seat. (A. 10.)

installation of the car seat are the chain of events forming a part of the schematic whole resulting in Teddy's injuries.

As the trial court recognized, the "exception is triggered in this case simply by the involvement in this case of a defectively designed car seat. On its face, the statute requires nothing more than involvement to trigger the exception." (A. 17.)

3. Only if Statute is Ambiguous May the Court Look Beyond Words of the Statute.

Defendants do not assert that Minn. Stat. § 169.685, subd. 4(b), is in any fashion ambiguous. Nonetheless they ask this Court to look to legislative intent. As previously stated, only when the statutory wording is ambiguous may legislative history be considered. Phelps, 537 N.W.2d at 274. Defendants also assert that the trial court's interpretation of the exception creates an absurd result. But only where a statute is ambiguous does the Court presume that the Legislature did not intend an absurd and unreasonable result. In re Will of Kipke, 645 N.W.2d 727, 731 (Minn. Ct. App. 2002), rev. denied.

4. The Interpretation Placed on the Statute By the Trial Court Is In Accord with Legislative Intent and Does Not Lead to an Absurd Result.

The interpretation placed on the statute by the trial court does not lead to an absurd result and it is not contrary to legislative intent. The trial court's interpretation of the statute, as applied to the facts of this case, pays homage to the legislative intent. As Defendants concede, if Defendants had been made parties to the product liability action,

evidence of their failure with regard to the installation of the child safety seat would have been admissible. In fact, it is common in products liability actions for the negligence of the user of the product to be submitted to the jury.

Moreover, in making their assertions on appeal, Defendants ignore that Teddy has conceded that had there had been no claim that Century's product was defective and Defendants had simply improperly installed the car seat, the exception to the seat belt gag rule would not apply. As Teddy's counsel argued:

This claim wasn't brought in the products case. It was brought separately in this file for a whole variety of reasons. But that doesn't mean that this case doesn't arise out of a products liability context. It truly does.

If, on the other hand, this was a lawsuit based not on a bad car seat or a negligent design of a car seat belt system but rather simple negligence of a parent in installing a car seat in a car, we wouldn't be here. . . . We would have no right to bring this claim but it is not. This is a lawsuit that is part and parcel with a defective product and these claims just as easily could have been a part of the earlier products case but they are not but that makes no difference . . .

(T. 8.) What we have here is a situation where Teddy sustained injuries in an incident that involved a defectively designed, manufactured, installed or operating child passenger restraint system. The exception must apply.

Section 169.685, subd. 4(b), is not a joinder rule, which is what Defendants essentially contend. The statute as written does not require a mandatory interpleader action or mandatory joinder of Teddy's claims against the Defendants in the liability action against Century. Notably Defendants provide no such evidence that joinder was

the Legislature's intent. Rather, the statute as written preserves all of the usual claims that arise out of a products liability claim. This is one of those claims.

Notably, the statute does not say the exception only applies in the lawsuit brought against the manufacturer of the defective product or against the seller of defective products. If the Legislature had so intended, it could easily have so stated. For example, the Legislature could have stated:

Paragraph (a) does not affect the right of a person to institute a civil action for damages against a dealer, manufacturer, distributor or factory branch for the defective design, manufacture, installation or operation of a passenger restraint system.

But the above is not what the Legislature enacted. To so assert that the above was the Legislature's intent is contrary to the statutory exception as written.

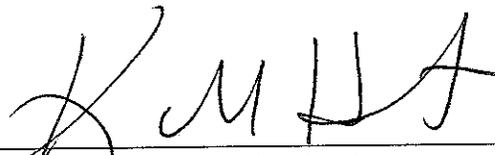
CONCLUSION

Respondent respectfully requests that the trial court be affirmed.

Dated: August 29, 2005

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

BY



Kay Nord Hunt, I.D. No. 138289

Robert J. King, I.D. No. 55906

Attorneys for Respondent

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131

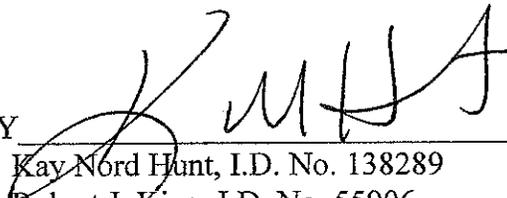
CERTIFICATION OF BRIEF LENGTH

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 3,448 words. This brief was prepared using Word Perfect 10.

Dated: August 29, 2005

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

BY



Kay Nord Hunt, I.D. No. 138289

Robert J. King, I.D. No. 55906

Attorneys for Respondent

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131