

NO. A08-583

State of Minnesota
In Supreme Court

VIRGIL DYKES AND CONNIE DYKES
D/B/A DYKES FARMS,

Respondents,

vs.

SUKUP MANUFACTURING COMPANY,

Defendant and Third-Party Plaintiff-Appellant,

vs.

SUPERIOR, INC.,

Third-Party Defendant-Respondent.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

- I. When a settlement is made with no contemporaneous evidence of intent to preserve claims against joint tortfeasors, is it subject to the rule of law that a release of one joint tortfeasor releases all others?

The trial court found no evidence of an intent to preserve claims against others when a lawsuit was settled and dismissed on the merits. It concluded that in the absence of such evidence, the release was a general release barring a second lawsuit against a joint tortfeasor. The Court of Appeals reversed, holding that the trial court "misapplied the law," and held that unless there was evidence that the injured party intended to release joint tortfeasors, a release is presumed to preserve all other claims. This holding reverses the presumption established in *Gronquist* that a release is a general release unless the settling parties specifically preserve claims against others at the time of the settlement. Appellant contends that the trial court's ruling was correct.

AUTHORITY

Frey v. Snelgrove, 269 N.W.2d 918 (Minn. 1978)

Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954)

Luxenburg v. Can-Tex Industries, 257 N.W.2d 804 (Minn. 1977)

- II. Does the principle of law remain that a release intended to be a partial release will operate as a general release if it does not contain indemnity provisions which protect non-settling parties from ever being required to pay more than their fair share?

The trial court concluded that because the settling parties had not intended the first release to be a *Pierringer* release, the release therefore operated as a general release. The Court of Appeals reversed this conclusion; a decision which destroys the requirements for a *Pierringer* release adopted in *Frey*. The Court of Appeals' remand of the case for trial exposes the non-settling party, as the only direct defendant, to potential exposure for more than its fair share. Appellant contends that the trial court's ruling was correct.

AUTHORITY

Frey v. Snelgrove, 269 N.W.2d 918 (Minn. 1978)

Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954)

STATEMENT OF THE CASE

On or about August 24, 2006, the Respondent Dykes brought suit against Appellant Sukup Manufacturing Company (hereinafter "Sukup") alleging that a Sukup grain moving system, which they had purchased from one of Sukup's dealers, Superior, Inc. (hereinafter "Superior"), was defective. Sukup brought a third party claim against the seller and installer of the equipment, Superior. Superior, in its Answer to the Third Party Complaint, alleged that the Dykes' claims were barred by the settlement agreement between the Dykes and Superior which released all claims.

The case came before Judge Terrance Walters, District Court, County of Wabasha, on Sukup's motion for summary judgment. Judge Walters granted summary judgment to Sukup and Superior and entered an order dismissing the case. In his accompanying memorandum, Judge Walters concluded that the settlement agreement reached between the Dykes and Superior in 2003 precluded the Dykes' action against Sukup because the agreement gave no hint of an intent to reserve any rights to proceed against any other potential joint tortfeasors. The trial court concluded that a release of one joint tortfeasor with no intent to preserve claims against joint tortfeasors operated as a release of all tortfeasors. Judge Walters further determined that there were no representations by the Dykes when they settled the earlier lawsuit in 2003 that they were accepting less than full compensation for their claimed damages at the time. Judge Walters was not persuaded that the 2003 settlement agreement failed to fully compensate the Dykes.

The Dykes appealed the order of summary judgment to the Court of Appeals. A panel of three judges, with Judge Harriet Lansing presiding, reversed the grant of summary judgment and remanded the matter for further proceedings. The Court of Appeals concluded that the District Court misapplied the law when it determined that the Dykes' failure to expressly reserve claims against Sukup in the settlement agreement conclusively proved an intent to release Sukup from liability. The Court of Appeals also concluded that there was a factual dispute regarding whether the Dykes were fully compensated as a result of the settlement with Superior.

STATEMENT OF FACTS

On August 19, 2002, Virgil Dykes entered a contract with Superior for the purchase and installation of a grain moving system at his farm, known as a "Cyclone Pneumatic Grain Moving System". (Appellant's Appendix - 1, hereinafter "AA-1") The grain moving system was installed to move corn from grain bins to the grain dryer through the use of blowers and air transfer tubes rather than the traditional method of using grain augers. (AA-7) Most of the component parts which Superior installed were supplied by Sukup Manufacturing Company, but some materials were fabricated by Superior. (AA-8) Electrical work was performed by others. (AA-9) Sukup Manufacturing Company delivered its components for the grain moving system to Plaintiffs' farm on or about September 6, 2002. (AA-12) Superior proceeded to install the pneumatic grain moving system at Plaintiffs' farm. *Id.*

The Cyclone System was in operation by October 14, 2002. (AA-17) The contract provided that all warranties were those of the manufacturer, but all repairs were to be performed by Superior. (AA-5) Superior invoiced the Dykes \$33,389.96 for the equipment, labor, and change orders related to the installation. (AA-12)

Shortly after the equipment was installed, the Dykes observed that the corn was being blown into the bins at a very high rate of speed and the Cyclone System was causing damage to the corn. (AA-17) Starting on October 17, 2002, the Dykes contacted both Superior and Sukup, telling them that the system was not operating properly and was causing damage to their corn. *Id.* On October 20, 2002, the Dykes stopped using the Cyclone System. *Id.* About

75,000 bushels of corn had been moved through the Cyclone System before its use was discontinued. *Id.*

Efforts were made to determine why the Cyclone System was not operating properly. The Dykes made many calls to Sukup and Superior. *Id.* On November 3, 2002, Paul Hanson of Mankato Farms Systems visited the Dykes' farm and inspected the installation. *Id.* He installed some additional equipment, but concluded the Cyclone System was still not operating properly. (AA-20) On December 8, 2002, Mr. Hanson wrote to the Dykes telling them that in his opinion the damage to their corn was caused by the improper installation of the Cyclone System, and they should seek reimbursement from the company who installed it and retain an attorney. (AA-21)

The Dykes refused to pay Superior's invoices. (AA-22)

The Dykes sold the corn that had been damaged by the Cyclone System. Some corn was sold between November 5 and November 26 to Red Wing Grain. This corn was 8.4% damaged, and price paid for the corn was discounted by \$1,414.25. The remainder of the corn was sold in three lots to A.D. M. between November 6, 2002 and June 17, 2003. This amount paid was discounted \$2,608.84, \$154.50, and \$82.88 respectively (a total discount of \$2,846.22) because of the damage to the corn. Thus, the total loss incurred by the respondents was \$4,260.47. (AA-14)

The Dykes claim, through their attorneys, that they delayed selling corn in the fall of 2002 and sold it at a reduced price in the spring of 2003. They also allege that by December

of 2002 they were in financial hardship and creditors were demanding payments of farm debts. (AA-29-30)

On or about February 5, 2003, Superior filed a mechanic's lien against the property of Virgil and Connie Dykes for the improvements to real property made by the installation of the materials. (AA-22-25) On or about April 28, 2003, Superior brought suit against Dykes seeking \$32,009.69 for the sale of the equipment and the installation work and foreclosure of the mechanic's lien. (AA-35-38) On May 23, 2003, Dykes responded with an Answer and Counterclaim, denying liability. (AA-39-49) The Counterclaim against Superior alleged that the grain system never worked as promised; it was not installed in a workmanlike manner; and it caused damages to the corn which exceeded \$50,000. (AA-41) On May 23, 2003, the attorney for the Dykes served Interrogatories and Requests for Admissions. (AA-50-55) The Interrogatories sought information on the manufacturer of the Sukup Cyclone Pneumatic Grain Moving System and other claims regarding it. (AA-52) The Requests for Admissions asked for an admission that it was the Sukup Cyclone Pneumatic Grain Moving System which caused damage to the Dykes' corn. (AA-55) On June 26, 2003, Superior served an Amended Complaint alleging breach of contract and monetary damages. (AA-56-72) Their Response to Counterclaim of the same date denied liability for damages. (AA-73-74)

On August 11, 2003, Mr. Dykes asked Raymond Guscette with Grain Vacs, Inc., to inspect the installation and render an opinion. Mr. Guscette inspected what he identified as a pneumatic system manufactured by Sukup Manufacturing. Mr. Guscette's written report

contained the following conclusions: that the Dykes corn dryer did not have the capacity to handle large volumes of corn; the piping for the pneumatic system was installed improperly; and the installer should have added a surge bin to the system. (AA-75-76)

On August 27, 2003, Dykes and Superior engaged in mediation, using A.M. Keith as their mediator. (AA-77-78) A negotiated settlement was reached. All parties and their attorneys signed a Mediated Agreement at the end of the mediation. It states:

“Plaintiff Superior, Inc. and Defendants Virgil L. and Constance E. Dykes reached the following agreement relating to all issues growing out of the above noted lawsuit.

1. Superior, Inc, through its agents will take down and remove for Superior’s use the system installed on the Dykes property by October 1, 2003. . . .

. . . .

3. Superior, Inc. will remove its lien it placed upon this property and dismiss its complaint and Virgil L. Dykes and Constance E. Dykes will dismiss their answer and counter complaint.” (AA-81)

The Dykes refused to authorize their attorney to sign a Stipulation of Dismissal until all of the work required of Superior by the Mediated Agreement had been actually completed. (AA-82) The Dykes wanted all of the equipment removed from their property at Superior’s cost. *Id.*

On or about October 6, 2003, the attorney for the Dykes sent to Superior’s attorney a Stipulation for Dismissal with Prejudice, signed on October 1, 2003, which stated:

The above-entitled action is hereby dismissed with prejudice and on its merits and without costs or disbursements to any party and it is agreed that any party may forthwith, without notice to the other, apply to the Court pursuant to the

provisions of this stipulation for an order directing that judgement be entered forthwith. (AA-84)

The attorney for Superior signed the Stipulation on October 8, 2003. (AA-84)

On June 6, 2005, the Dykes' attorney sent a letter to Sukup Manufacturing Company claiming damages of \$54,206.47. (AA-12-15) On or about August 24, 2006, the Dykes, with new counsel, brought suit against Sukup alleging that the Sukup pneumatic grain moving system purchased on or about August 19, 2002 was defective, that Sukup breached express and implied warranties, that representations made by Sukup and/or its agent, Superior, Inc., were false and that Sukup violated Minnesota's Consumer Fraud and False Advertising statutes. (AA-88-93)

The Dykes' Response to Sukup's Motion for Summary Judgment significantly narrows the potential issues for decision by this Court. The Dykes are not contending that the settlement agreement should be set aside so they can pursue additional claims. ("The Dykes make no claim that the mediated settlement agreement with Superior is invalid." AA-121) The Dykes further make no claim that their release should be construed as a *Pierringer* release, releasing only Superior and preserving claims against Sukup. ("The mediated settlement agreement and subsequent Stipulation of Dismissal in this case clearly did not constitute a *Pierringer* release." *Id.*)

ARGUMENT

There is no dispute that the agreement the respondent/injured party (Dykes) and one joint tortfeasor/respondent (Superior) entered into three years before the injured party brought suit against the other joint tortfeasor/appellant (Sukup) was a release. The injured party contended it was a release. The settling joint tortfeasor contended it was a release. The District Court found it was a release. The Court of Appeals also concluded it was a release.

There is also no dispute in this case that the settling party, Superior, and the non-settling party, Sukup, were joint tortfeasors. The injured party has never contended that its settlement agreement was with a concurrent tortfeasor, or with a party against whom it asserts claims for damages in something other than tort.

The trial court concluded that when the agreement between the settling parties is an undefined release, which expresses no intent to preserve claims against non-settling joint tortfeasors, the release is a general release, which discharges all joint tortfeasors.

The Court of Appeals, in reversing the trial court, concluded that the release was a partial release. There is only one recognized type of partial release involving joint tortfeasors under Minnesota law, and that is the *Pierringer* release. The injured party in this case has expressly denied that the release in this case should be construed as a *Pierringer* release, and the documents constituting the release contained none of the requisite language for the protection of joint tortfeasors and settling parties needed to make a release a valid *Pierringer* release.

This Court should reject the creation by the Court of Appeals of a new type of release affecting joint tortfeasors. When an injured party agrees to settle with one joint tortfeasor, the injured party should be required to utilize a *Pierringer* release if it wishes to avoid having the release be a general release of all joint tortfeasors. Creating a new type of release which allows claims to proceed against the non-settling joint tortfeasor, with contribution claims also proceeding against the settling tortfeasor, defeats the purpose and finality of the original settlement.

When an injured party agrees to release one joint tortfeasor without preserving claims against joint tortfeasors in the manner required by *Pierringer* releases, the resulting release should be deemed to be a general release.

I. THE MEDIATED SETTLEMENT AGREEMENT BETWEEN THE DYKES AND SUPERIOR CONSTITUTED A GENERAL RELEASE.

At issue for this Court is the determination of the consequences of a settlement when the injured party agrees to dismiss a tort claim and stipulates that the dismissal is a final dismissal of the claim with prejudice and on the merits. Should that dismissal have the effect of a general release, which releases joint tortfeasors, or should it be construed as a partial release, which preserves claims against joint tortfeasors?

In the present case, the Dykes and Superior reached a mediated settlement agreement which stated that it was a complete release of the claims which the injured party (the Dykes) had asserted in their lawsuit against Superior arising out of the installation of a Sukup grain

moving system on the Dykes' farm. Both parties to the settlement had knowledge of Sukup's role as the manufacturer of the equipment that had been installed. Moreover, the Dykes had made references to the allegedly defective nature of that equipment in its lawsuit. Yet none of the documents comprising the settlement made reference to potential claims against the manufacturer.

Three years later the injured party brought suit against the manufacturer. The manufacturer asserted a claim for contribution against the settling installer.

The trial court held that the first release and settlement agreement was a general release because the injured party had not expressed any intent to preserve claims against the manufacturer at the time of the original settlement.

A. A Mediated Settlement Agreement Constitutes a Release.

Mediated settlement agreements are approved instruments to settle disputes in this state. The Minnesota Legislature requires that parties to all civil cases, with certain exceptions, must employ some method of alternate dispute resolution. *See* Minn. Stat. § 484.76 (2008); *see also* Minn.Gen.R.Prac., Rule 114.01. Because the Legislature mandates that the vast majority of civil cases undergo alternate dispute resolution, it has therefore expressed a clear intent to encourage parties to resolve civil disputes before trial. This necessarily requires that parties should be able to reach a final resolution of their claims through mediation. *See* Minn. Stat. § 572.31 et seq. (2008). In *Schmidt v. Smith*, this Court stated “the law favors compromises, and there must be a zone of free action within which

differences may be terminated by the parties with the complete assurance that the matter is final.” 299 Minn. 103, 107, 216 N.W.2d 669, 671-72 (Minn. 1974).

A mediated settlement agreement is typically memorialized as a release. Through a release, the injured party agrees to give up pursuing other parties for liability under the same cause of action in exchange for considerations such as money or the termination of opposing claims. *Mantz v. Sullwold*, 203 Minn. 412, 281 N.W. 764 (Minn. 1938). “A release may, dependent upon its terms, have the effect of extinguishing a right of action, and if so, it may be pleaded as a defense to any suit on the action.” *Gronquist v. Olson*, 242 Minn. 119, 125, 64 N.W.2d 159, 164 (Minn. 1954). Releases serve the important purpose of the finality of settlements. *Schmidt*, 299 Minn. at 107, 216 N.W.2d at 671-72. Without the finality of a release, parties could initiate numerous lawsuits arising out of the same incident. For this reason, it is the injured party which must decide whether to reserve potential claims against other parties when agreeing to release one party. The injured party must take certain steps if it desires that a release be something other than a complete settlement of the cause of action. *Frey v. Snelgrove*, 269 N.W.2d 918, 922-23 (Minn. 1978).

In 2003, Superior and the Dykes participated in mediation to resolve their dispute. Under the signed agreement, both sides agreed to surrender their claims in exchange for each other’s acquiescence to end the litigation. The mediated settlement agreement thus acted as a release of each party’s claims under a cause of action in tort. On review of this matter, both the trial court and the Court of Appeals determined that the agreement functioned as a release.

B. A Release Coupled with a Stipulation of Dismissal Constitutes a General Release.

When a party agrees to release a claim, its agreement may affect other parties in addition to the settling parties. By agreeing to dismiss its claims, an injured party consents to end litigation on that claim. "It is fundamental that a dismissal 'with prejudice and on the merits' is, by its explicit terms, a final determination and is equivalent to an adjudication on the merits." *Butkovich v. O'Leary*, 303 Minn. 535, 536, 225 N.W.2d 847, 848 (Minn. 1975).

A party may not subsequently re-litigate claims which have been released and dismissed. *Schoenfeld v. Buker et al.*, 262 Minn. 122, 134, 114 N.W.2d 560, 568 (Minn. 1962)(citing *Favorite v. Minneapolis St. Ry. Co.*, 253 Minn. 136, 139, 91 N.W.2d 459, 462 (Minn. 1958)). The agreement to the entry of a judgment with a dismissal of a claim on its merits is an agreement to dismiss more than the claims against the settling party.

A judgment on the merits constitutes an absolute bar to a second suit for the same cause of action, and is conclusive between parties and privies, not only as to every other matter which was actually litigated, but also as to every matter which might have been litigated therein. *Mattsen v. Packman*, 358 N.W.2d 48, 49 (Minn. 1984).

In the present case, it is undisputed that one of the settling parties, Superior, agreed to a dismissal of the claims arising out of the lawsuit against it with prejudice and on the merits. The trial court found that all of the evidence presented regarding the intent of the Dykes at the time of the settlement expressed a similar intent. The trial court concluded that at the time of the settlement agreement, both parties expressed agreement that the entire cause of action was dismissed and the entire matter was resolved. This marks a factor

distinguishing the present case from those cases which involved an agreement between the settling parties that preserved claims against others. See *Gronquist*, 242 Minn. 119, 64 N.W.2d 159; *Couillard v. Charles T. Miller Hospital*, 253 Minn. 418, 92 N.W.2d 96 (Minn. 1958); *Luxenburg v. Can-Tex Industries*, 257 N.W. 2d 804 (Minn. 1977).

Here, the Dykes had ample time to consider whether to resolve or to preserve claims. They made a choice to agree to dismiss their cause of action with prejudice and on the merits. If an injured party, when settling a case with one party, wants to reserve potential claims against other parties, the injured party must reach an agreement with the settling party that claims against others are being preserved. *Frey v. Snelgrove*, 269 N.W.2d 918, 922 (Minn. 1978). If the settling parties agree that they are giving finality to this claim, this agreement should be enforced. Because both the Dykes and Superior evidenced no intent or agreement to preserve claims against others at the time of settlement, their dismissal of the entire cause of action should be enforced.

II. A GENERAL RELEASE WHICH DOES NOT PRESERVE THE RIGHT TO SUE OTHERS OPERATES AS A RELEASE OF ALL JOINT TORTFEASORS.

A. The Release Entered Into By Dykes and Superior Was Not A Partial Release.

While it is undisputed that the settlement agreement made between Dykes and Superior was a release of the claims against Superior, it is also undisputed that the release was not a *Pierringer* release.

This Court, in *Gronquist*, *Couillard*, and *Luxenburg* restricted the scope of general releases, as long as the intent was manifested at the time of settlement. The release of a

claim on a promissory note did not release claims based on fraud. *Gronquist*, 242 Minn.119, 64 N.W.2d 159. The release of one tortfeasor did not release a concurrent tortfeasor. *Couillard*, 253 Minn. 418, 92 N.W.2d 96. The release of a claim against a tortfeasor did not release independent causes of action. *Luxenburg*, 257 N.W.2d 804. This Court also addressed the question of whether the intended partial release of one joint tortfeasor also operated as a release of all joint tortfeasors in *Frey*, 269 N.W.2d 918. The Court held that when parties intend to enter into a partial settlement between the injured party and one joint tortfeasor, they may do so provided that the guidelines set forth in the case are followed to assure that there would be a fair trial to all parties. *Id.* at 922. The Court stated:

The use of a so-called *Pierringer* release is in accord with Minnesota practice and our law of comparative negligence in tort actions. The bar and trial bench of this state have recently been following the procedures set forth in *Pierringer v. Hoger*, 21 Wis.2d 182, 124, 124 N.W.2d 106 (1963). In that decision the Wisconsin Supreme Court approved the release of a joint tortfeasor which reserved the plaintiff's right to maintain the cause of action against the remaining defendants and also held that the nonsettling defendants' right to contribution can be cut off by a plaintiff who agrees to indemnify the settling defendants against any claim of contribution. By the terms of this type of release the nonsettling defendant will never be required to pay more than his fair share as determined by the jury's finding of comparative negligence.

Id. at 921. The Court went on to state:

In future cases involving so-called *Pierringer* releases, we suggest the following guidelines: When a settlement or release is entered into, the trial court and other parties should be immediately notified, and the terms of the agreement made a part of the record. If the plaintiff has agreed to indemnify the settling defendant against all possible cross-claims of the nonsettling parties, the trial court should ordinarily dismiss the settling defendant from the case, in accordance with the *Pierringer* release. Since the settling defendant has fixed his limits of financial liability to the plaintiff by entering into the

release, he is deemed also to have relinquished any cross-claims against the remaining defendants.

Id. at 923.

The law and procedures for entering into *Pierringer* releases is well established in Minnesota. Attorneys have been careful to enter into partial settlements with joint tortfeasors by the use of *Pierringer* releases. When parties do not incorporate the provisions of *Pierringer* releases into settlement agreements, then they are releasing all claims against joint tortfeasors. Partial releases which do not incorporate the safeguards of joint tortfeasors required by *Pierringer* releases do not preserve claims against non settling parties. These releases are general releases.

B. The Parties' Intent at the Time of Settlement Preserved No Rights Against Other Tortfeasors.

Following the trial court's grant of summary judgment to Sukup, the Court of Appeals decided that the agreement was not a complete release of claims because the Dykes asserted by affidavit that they did not intend to release other parties and the settlement documents were silent about the effect of the release on other parties. The other settling party, Superior, asserted that the settlement had been a release of all claims. The Court of Appeals ruled that the trial court misapplied the law, that there was a factual dispute, and remanded the case to the trial court for further proceedings.

However, in its analysis of the circumstances in which the agreement was formed, the trial court found that Superior and the Dykes expressed no intent to preserve any claims against others at the time of the original settlement. Absent any agreement of the parties, as

part of the original settlement agreement, to preserve claims against others, the trial court concluded that the settlement agreement should be construed as a general release of all other claims against joint tortfeasors arising out of the same cause of action. There was no evidence at the time of settlement to indicate that the parties intended to do anything other than fully resolve the entire matter. As the trial court noted, there was nothing in the language of any of the documents at the time of the agreement, or the available factual circumstances at the time of settlement, to indicate the Dykes intended to preserve any claims. Rather, the Dykes agreed to end the litigation and stipulate to its dismissal with prejudice. Nothing in any of the documents attempted to preserve claims against others. The trial court specifically noted that the agreement evidenced no intent that claims had not been settled. See Addendum, pp.7-8.

In *Gronquist*, the two settling parties explicitly agreed that there was no agreement to settle the entire claim. 242 Minn. at 121, 64 N.W.2d at 161-162. Likewise, in *Luxenburg*, there was no dispute that it was the intent of the parties to preserve claims against non-settling parties. 257 N.W. 2d 804.

Thus, there remains no genuine issue of material fact because each party demonstrated an intent to finalize the claim and did not indicate any intention to preserve claims for future litigation.

C. This Court Has Set Forth in Frey the Appropriate Method Of Creating a Partial Release.

The Court of Appeals erred in the present case when it concluded that a release of a joint tortfeasor which was not a *Pierringer* release nevertheless was a partial release which allowed the injured party to proceed to trial against the remaining joint tortfeasor.

The Court of Appeals stated in *Johnson v. Brown*, 401 N.W. 2d 85, that *Pierringer* releases were not necessary. In the unpublished decision *Market America Corporation v Reinert*, 2007 WL 823862 (Minn. App.), the Court of Appeals went further and concluded that a release which is not a *Pierringer* release operates as a satisfaction pro tanto to the remaining tortfeasors.

In the present case, the Court of Appeals has gone even further and concluded that a release which includes none of the safeguards built into *Pierringer* and was a dismissal of all claims nevertheless allows the injured party to proceed against any non-settling party even though there was no evidence at the time of the settlement suggesting it was anything other than a general release.

Pierringer law as set forth in *Frey* clearly provides a method by which, claims can be settled in part while preserving claims against other potential defendants. As a result of a *Pierringer* release, while the injured party may have some possibility of a double recovery, they are at the same time undertaking a risk of undercompensation, and they are knowingly accepting both the potential risks and the rewards. While pro tanto reductions of damage amounts may be appropriate when there are separate and distinct causes of action that the

injured party has against other parties, it should not be incorporated into resolution of claims regarding joint tortfeasors.

III. AN INJURED PARTY MUST SHOW THAT THE RELEASE CONTEMPLATED THAT IT HAD RECEIVED LESS THAN FULL COMPENSATION.

As this Court in *Gronquist* stated:

if (the injured party) receives a part of the damages from one of the wrongdoers, the receipt thereof not being understood to be in full satisfaction of the injury, he does not thereby discharge the others from liability.

Gronquist, 242 Minn. 126, 64 N.W.2d 164. Therefore, the injured party must show that it was understood at the time of settlement that the party was not fully compensated. As was stated in *Couillard*: “The release is, however, prima facie evidence that full compensation was received...and the burden is on the plaintiff to prove otherwise.” *Couillard*, 253 Minn. at 428, 92 N.W.2d at 103.

The *Luxenburg* Court agreed that there must be an understanding that less than full compensation was received and that there must be evidence to support that the understanding was contemporaneous with the release. *Luxenburg*, 257 N.W.2d at 808.

A. Full Compensation Is To Be Determined Based On The Information At The Time Of Settlement.

The trial court judge in this matter examined whether the Dykes received full compensation. The judge reviewed all of the facts submitted to him by both parties. He concluded that the evidence that must form the basis of his decision was the contemporaneous record of the facts at the time the case was settled in 2003.

These facts included that the Dykes had already stopped using the equipment before the case was settled. They had sold the corn and had incurred their loss. The damage to the corn was substantially less than the amount they owed on the Sukup equipment. They had waited until they were satisfied with the removal of the equipment, approximately one year after the damage occurred, before they signed the stipulation of dismissal. Two persons, who had expertise regarding this equipment, had been consulted, and both opined that the problems resulted from the installation performed by Superior. There was no evidence to suggest that there was an understanding, at the time of settlement, that they had received less than full compensation.

The judge made a factual finding that the Dykes did not express any indication that they had not received full compensation when they resolved their dispute with Superior. The trial court did not accept the self-serving affidavits of the Dykes, created three years after the settlement, to change the record of what occurred at the time of the actual settlement itself.

This was the proper evidentiary standard for the Court to use. This Court in *Gronquist*, *Couillard*, and *Luxenburg* has consistently relied upon the intent of the parties at the time of settlement to determine whether it was understood that there was full compensation. If, at the time it settled the case, the injured party did not provide any indication that it was are not being fully compensated, and it agreed to dismiss the claim with prejudice and on the merits, it should not be allowed to create a disputed issue of fact through subsequent, self-serving statements. The effect of allowing these respondents to make such a delayed claim is to allow any party to unilaterally change the terms of a settlement based

solely on their self-serving statements. This is a significant leap by the Court of Appeals which would undermine settlements and allow claims to be reasserted long after they were believed to have been extinguished.

If there were other reasons to overturn this settlement such as fraud, duress, mistake, etc. the injured party could have availed themselves of Rule 60.02. They chose not to do so.

B. Where the Injured Party Received Full Compensation, All Claims for Damages Are Extinguished.

It is a basic rule of the common law that when an injured party has received full compensation for a loss, there is satisfaction of all claims against any parties. *Gronquist*, 242 Minn. at 126, 64 N.W.2d at 164. Once a claim has been satisfied, all further legal action is prohibited, even if there may have been other at fault parties who may have had legal liability. *Id.* at 127-128, 165.

This was one of the issues the Court was facing in *Gronquist*. There the injured party had obtained a jury verdict establishing the full amount of the damages before reaching a settlement with one of the responsible parties. *Id.* at 120, 161. The Court in *Gronquist* held that even if two parties agreed to a partial settlement of the injured party's claims, those claims could not survive a satisfaction of the claim by the payment by one party of full compensation. *Id.* at 127-128, 165. Additionally, an injured party could not, after reaching a partial settlement of a claim with one responsible party, seek more than full compensation from remaining at-fault parties. *Id.* If the amount of the damages had been judicially

determined, the injured party would be limited to its recovery from non-settling parties to a sum that would result in full compensation. *Id.*

The Court in *Gronquist* did not, as the Court of Appeals suggested in its decision in this case, hold that a two prong test should be applied to all circumstances, and that any release which did not both give full compensation and expressly release claims was not a complete release.

The judicial policy involved in prohibiting an injured party from commencing a second lawsuit after having received full compensation for an injury is finality of litigation and judicial oversight of litigation to ensure that parties are not subjected to claims for damages after an injured party has been fully compensated. *Bixler by Bixler v. J.C. Penney Co., Inc.*, 376 N.W.2d 209, 214-215 (Minn. 1985). Thus, the law provides that when an injured party has been fully compensated, the cause of action is extinguished. *Luxenburg*, 257 N.W.2d at 807. This extinguishment extends beyond the narrow confines of joint tortfeasors, which are the subject of inquiry when there has been a partial settlement. Once a plaintiff has received full compensation from one party, the injured party cannot proceed to seek duplicate compensation from others. *Id.* See also *Gronquist*, 242 Minn. at 126, 64 N.W.2d at 164. This is not a matter of contract or agreement between the settling parties. It is judicial oversight of the ability of an injured party to seek damages.

In those cases where the injured parties' damages have been firmly established, and there are separate and distinct theories of claims, theories of liability, or causes of action which the injured party can pursue against several parties, an injured party will be prohibited

from collecting more than full compensation even after settling with some of the at-fault parties. Thus, for example, in *Gronquist*, the Court required that the remaining claims against the non-settling at-fault parties would need to be subjected to a pro tanto, or dollar for dollar, set-off against the total amount of the damages, since these had been judicially established by a jury. *Gronquist*, 242 Minn. at 129, 64 N.W.2d at 166.

The question of whether the injured party had obtained full compensation, however, should not be considered one factor in determining whether a release is a complete release which bars other claims. Even if a release does not bar additional claims, if the injured party had received full compensation, subsequent lawsuits are barred. These two considerations are separate. They should not be combined into a two-pronged test, as the Court of Appeals did in this case.

CONCLUSION

The law in Minnesota has encouraged settlement. It has always allowed there to be complete and final settlements of all claims. It has historically required there to be contemporaneous proof that at the time of a settlement the parties intended the settlement to be less than a complete settlement. In *Frey*, this court has set forth a procedure which allows for partial settlement of claims. It has been universally adopted by the bar and its effect is well understood. A party, faced with the possibility of the need to preserve its rights against other possible defendants, has a clear and time-honored method to protect those rights. A party that concludes that a settlement was fundamentally flawed can also avail itself of Rule 60.02 which allows a settlement to be set aside if certain criteria are met.

By allowing a party to assert, years after a settlement, first that they did not intend to enter into a full and complete release and, second, that they did not receive full compensation, the Court of Appeals seriously weakens the effectiveness of settlements. This may ultimately result in a reluctance to enter into now uncertain settlements and a desire, and a perceived need, to instead litigate claims through a final order to obtain final adjudication of disputes.

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