

State of Minnesota
In Court of Appeals

OFFICE OF
APPELLATE COURTS
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ALICE ANN STAAB,
Respondent,

VS.

DIOCESE OF ST. CLOUD,
Appellant.

BRIEF OF AMICUS CURIAE
MINNESOTA DEFENSE LAWYERS ASSOCIATION

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STATEMENT OF THE CASE

This appeal results from the trial court's ruling applying Minn. Stat. § 604.02, subd. 2 to reallocate a non-party's fault to a party which is severally, but not jointly liable, resulting in the severally liable party being responsible for 100% of the damages awarded by the jury.

ARGUMENT

I. The trial court's ruling produces unfair and arbitrary results which will encourage the targeting of "deep pocket" minimally at-fault defendants.

The trial court's holding, if affirmed, will produce inconsistent and arbitrary results when applied in practice. The MDLA would like to draw the Court's attention to two specific problems that will result from affirming the trial court's ruling. The MDLA's first concern is with fairness – this rule will result in minimally at-fault defendants being held jointly liable for 100% of jury awards despite the legislature's 2003 attempt to avoid this very problem. Second, this rule will produce arbitrary results for defendants, because whether a defendant is held jointly liable for an entire award will depend not upon a defendant's actual percentage of fault, but on the fortuity of whether additional defendants happen to be present at the time of entry of judgment, or whether other defendants are deemed uncollectible.

As an example, assume potential defendant 1 (D1) is 5% at fault, and potential defendant 2 (D2) is 95% at fault. Under the district court's analysis, if plaintiff sues D1 only, D1 would be held liable for the entire verdict, even though it is only 5% at fault, because D2's "obligation" would be deemed uncollectible under Minn. Stat. § 604.02,

subd. 2. If plaintiff were to sue both D1 and D2, D2 would be jointly liable for the whole amount of the award and D1 would only be severally liable for 5%. Thus, under the district court's rule, D1's liability for the judgment is dependent upon the pleading choices of the plaintiff's attorney.

Perhaps ironically, the trial court's interpretation of Minn. Stat. § 604.02 encourages plaintiffs to forgo suit against those whose conduct is most responsible for the damages. Pursuant to the trial court's ruling, excluding all but one at-fault defendant, regardless of that defendant's percentage of fault, creates full joint and several liability for that defendant, so long as plaintiff moves for reallocation of the fault of the non-party tortfeasors. The most at-fault defendants would escape liability. Fully burdening those least at fault was never the intent of the legislature.

Minnesota cannot embrace a tort system whereby a party's liability is not dependent upon fault but upon the pleading strategy of plaintiff's counsel. The ruling of the trial court creates the very problem that the 2003 legislature thought it was correcting – minimally at-fault defendants paying the share of the substantially at-fault defendant. Indeed, the trial court's ruling makes Minnesota law worse for the minimally at-fault defendant than at any time in recent history.¹

It is important to note that the defendant cannot cure this problem through third-party practice. Although D1 could assert third-party claims against D2 to bring D2 into

¹ Prior to the 2003 amendment and since the 1989 amendment, the liability of defendants whose fault was 15% or less was limited to four times the defendant's percentage of fault, including any amount reallocated to that defendant under subdivision 2. Minn. Stat. § 604.02, subd. 1 (2002).

the case, D1 would only have a contribution and/or indemnity claim against D2, and D2 would not be jointly and severally liable with D1 as to the plaintiff's claims, even though D2 is 95% at fault, since the plaintiff never asserted claims against D2. D1 would only be able to collect against D2 after D1 paid 100% of the judgment, but there would be no recovery if D2 were minimally insured and judgment-proof.

II. The trial court's ruling leads to absurd results and renders subdivision 1 of the statute ineffective.

The rules of presumption in ascertaining legislative intent provide that the legislature never intends an absurd result, and that the legislature intends the entire statute to be effective and certain. See Minn. Stat. § 645.17.

The trial court's interpretation operates to gut subdivision 1, which is a violation of the second presumption in ascertaining legislative intent, that the legislature intends the entire statute to be effective and certain. The trial court interprets subdivision 2 to reach a result which is in direct contravention of subdivision 1 as interpreted by the Minnesota Supreme Court in Staab v. Diocese of St. Cloud, 813 NW.2d 68 (Minn. 2012).

In Staab, in interpreting the 2003 amendments to 604.02, subd. 1, the court held:

In [limiting the blanket exception in the prior statute that each Defendant is jointly and severally liable for the whole award], the Legislature explicitly limited the common law principle of joint and several liability to the four enumerated circumstances, thus enabling an injured person to recover more than a tortfeasor's comparative responsibility share in only those four circumstances. Therefore, we 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.

Id. at 78.

Thus, in 2003, the legislature, by passing Minn. Stat. § 604.02, specifically intended to provide relief to those defendants who are 50% or less at fault and who do not satisfy the other exceptions to subdivision 1, by limiting such defendants' liability to several liability, rather than joint. The trial court's interpretation of subdivision 2, however, is that subdivision 1 only limits joint liability until a motion for reallocation is made. Inevitably, a motion for reallocation will always be made if any fault has been attributed on the verdict to a non-party, or if one of the defendants is indeed uncollectible. Under the trial court's ruling, defendants deemed to be severally, rather than jointly and severally, liable under subdivision 1 can become jointly and severally liable through operation of subdivision 2. It was clearly never the legislature's intent to limit joint liability in subdivision 1 only to take that limitation away upon a plaintiff's request for reallocation under subdivision 2.²

The result is also a violation of the first presumption in ascertaining legislative intent, that the legislature does not intend an absurd result, because whether a party is

² This is consistent with the cases cited by appellant which interpret the reallocation provision to not apply where joint liability does not exist, as well as Professor Michael Steenson's interpretation of how the reallocation provision applied after the 2003 amendments to subdivision 1:

Section 604.02, subdivision 2 of the Comparative Fault Act was not directly changed by the 2003 amendment, although its role was substantially diminished through the adoption of several liability as the general rule in cases involving indivisible injuries caused by joint, concurrent, or successive acts of two or more at-fault defendants. The simple reason is that the elimination of joint and several liability in favor of a general rule of several liability will remove the need for reallocation.

Steenson, Michael, "Joint and Several Liability in Minnesota: The 2003 Model," 30 Wm. Mitchell L. Rev. 845 (2004).

jointly liable becomes dependent not on actual fault but on another defendant's collectability, or, worse, the plaintiff's attorney's strategic decision about which defendants to sue. Under the trial court's interpretation of subdivision 2, plaintiffs will be encouraged to sue a single defendant with insurance rather than all joint tortfeasors who may or may not be collectible, because even a finding of 1% fault will obligate that defendant to joint and several liability by operation of subdivision 2, thus streamlining collection and forcing the 1% at-fault defendant to undertake the burden of collection, and the risk of uncollectability, against co-tortfeasors.

CONCLUSION

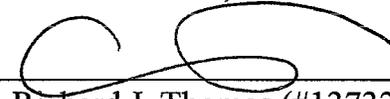
In conclusion, the MDLA urges this Court to apply a rule that will result in fairness and consistency for civil litigants in Minnesota. The MDLA respectfully requests that this Court reverse the trial court and hold that Minn. Stat. § 604.02, subd. 2 may only be invoked where a judgment is uncollectible and only where the defendant receiving the reallocation of fault is jointly liable.

Dated: 10/12, 2012.

Respectfully submitted,

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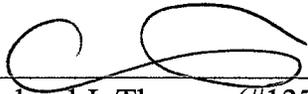
CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 1,354 words. This brief was prepared using Microsoft® Office Word 2003 for Windows.

Dated: 10/12, 2012.

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