Land & Water Law Review

Volume 15 | Issue 1 Article 12

1980

Torts - Joint Torfeasors - The Effect of a Release - Harris v. Grizzle

Loretta B. Kepler

TORTS—Joint Tortfeasors—The Effect of a Release—Harris v. Grizzle, 599 P.2d 580 (1979).

On May 22, 1975, Diane Harris was injured in an automobile accident. Fifteen months later she died, and the administrator of her estate instituted a wrongful death action against the driver of the other vehicle involved in the accident. That action was settled, a release was signed, and the case was dismissed with prejudice. A second wrongful death action alleging negligence was filed against the treating physician, surgeons and hospital. The District Court of Laramie County granted the defendants motion to dismiss and stated no reason. The Wyoming Supreme Court reversed and held that the plaintiff-appellant had not split his cause of action by suing the driver and appellees separately and that the release did not discharge the appellees of their liability.[1]

Analysis of the Court's Opinion

The court disagreed with the appellees' assertion that the appellant had split his cause of action by suing the driver involved in the accident in one wrongful death action, then suing the physician, surgeons and hospital in a second wrongful death action. The opinion was based primarily upon the court's reading of the Wyoming Uniform Contribution Among Tortfeasors Act.[2] The court recognized that the general rule allowing joint tortfeasors to be sued separately or jointly was retained under Section 1-1-110(h) of the Wyoming Statutes, and in applying the rule to a wrongful death action, the court followed the reasoning of a 1972 California case, *Helling v. Lew*.[3]

There, the court found no requirement that the causes of action and all potential defendants be joined in one action for wrongful death. The California court was persuaded that a wrongful death action sounds in tort and therefore, the same principles applicable to the joinder of causes of

1. Harris v. Grizzle, 599 P.2d 580 (1979).
2. Wyo. Stat. §§ 1-1-110 to 1-1-113 (1977).
3. Helling v. Lew, 28 Cal.App. 3d 434, 104 Cal.Reptr. 789 (1972).

action and defendants in common law tort action should be applied to statutory actions for wrongful death.[4] In response to the argument that a wrongful death action is joint, single, and indivisible, the California court stated that the action is joint only insofar as it is subject to the requirement that all heirs should join in the action and that the damages awarded should be in a lump sum, that it is single only insofar as it must be maintained by one of the statutory designees, and that it is indivisible only insofar as it precludes omitted heirs from bringing subsequent and individual actions for the recovery of their individual damages.[5]

To add support to its holding that the appellants could bring two separate wrongful death actions, the Wyoming court stated that the facts of the appellant's claim against the driver were clearly different than those of the malpractice action. Since the cause or causes of death had not been judicially determined, the court concluded that there were two separate actions to be brought by the appellant.[6]

The court next addressed the question of the effect of the release upon the subsequent wrongful death suit. The appellees argued that the settlement and dismissal with prejudice barred the second action.[7] The court found Section 1-1-113 of the Wyoming Statutes applicable.[8] Since the release[9] did not purport to discharge the appellees, the

4. *Id.*, 104 Cal.Rptr. at 792.
5. *Id.*
6. Harris v. Grizzle, *supra* note 1, at 585.
7. Brief for Appellees Flick and Sharp at 5, Brief for Appellee Hospital and trustees at 5, Harris v. Grizzle, *supra*, note 1.
8. WYO. STAT. § 1-1-113 (1977).
   (a) When a release or a covenant not to sue or not to enforce judgment is given in good faith to one (1) of two (2) or more persons liable in tort for the same injury or the same wrongful death:
      (i) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
      (ii) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.
9. "The following named persons . . . do acknowledge full payment and satisfaction of any claim or claims which they may have or may in the future have against said defendants growing out of the motor vehicle collision and accident described in paragraph 4 of said Complaint . . .," Harris v. Grizzle, *supra* note 1, at 584.

court held it could not release them from liability. The rule in *Feiser v. St. Francis Hospital and School of Nursing, Inc.* was adopted, that a release of the original tortfeasor does not automatically release the successive independant tortfeasors.[10] The Wyoming court concluded that the release would have the effect of reducing a judgment against the later tortfeasors, but would not bar a further recovery from the doctor and hospital for malpractice unless it was intended to release them or constituted full compensation for the appellant's injury.[11]

A close examination of the statute relied upon by the court leads one to the conclusion that the *Harris* case was correctly decided. Section 1-1-110 clearly applies to two or more persons who become jointly or severally liable in tort for the same wrongful death.[12] Section 1-1-113 specifically states that a release of one or more persons liable in tort for the same wrongful death will not discharge the other joint tortfeasors from liability.[13] Any holding that the plaintiff could not bring an action against the other joint tortfeasors after a release was signed with the first joint tortfeasor would be a discharge of liability and clearly would be prohibited under the statute.

The statute was applied simply and correctly; the result of the case, however, raises a number of problems. First, it raises the practical problem of proving both the negligence of the driver and the negligence of the physician to be a cause of the death. Theories of proximate cause and intervening cause might confuse the issue because the allegedly negligent acts of the defendants were independant of one another. Separate duties were breached, and the acts occurred at different times. Second, the ruling promotes the possibility of collusion between the plaintiff and one defendant. Because the release discharges the first joint tortfeasor from all liability for contribution to any other joint tortfeasor,[14] a plaintiff may protect one joint tortfeasor

10. Feiser v. St. Francis Hospital and School of Nursing, Inc., 212 Kan. 35, 510 P.2d 145, 150(1973).
11. Harris v. Grizzle, *supra* note 1, at 586.
12. WYO. STAT. § 1-1-110 (1977).
13. WYO. STAT. § 1-1-113 (1977).
14. WYO. STAT. § 1-1-113(a)(ii) (1977).

from liability for his complete share of the damage and obtain the remainder of the damages from another joint tortfeasor.[15] Third, the result of this case seems to have a serious impact upon judicial economy. A plaintiff has several causes of action, one against each joint tortfeasor. He may choose to bring a suit against each person, and as long as he settles each case before a decision is rendered, and has not been fully compensated for his damage, he can continue to bring suits against the remaining joint tortfeasors. A closer examination of the history and reasons for the results of this case is necessary to determine whether the result is, in fact, justified.

JOINT OR INDEPENDENT TORTFEASORS

It is important to distinguish between joint tortfeasors and subsequent independent tortfeasors. Each involves a separate line of history.

Under the common law of England, liability for a "joint tort" meant vicarious liability for concerted action. When several persons acted in concert with a common purpose to commit a trespass, the common law found the act of one to be the act of all. Each person was liable for the entire damage.[16] Each person could be sued separately, but could also be joined in one suit because the common law recognized only one cause of action. In the United States, the rules of joinder were more liberal, and courts would permit joinder in situations in which the acts of two defendants combined to produce a single and indivisible result.[17] By careless usage, those defendants were labelled "joint tortfeasors."[18] The common law rule of one cause of action applying to joint tortfeasors was retained, but without the underlying justification of concerted action.[19] Each joint tortfeasor remained severally liable for the entire wrong.

15. Suppose the plaintiff has suffered $100,000 damages and that his brother could be held 50% liable in a suit for contribution by X who was a joint tortfeasor. The plaintiff can release his brother for a consideration of $5,000 and seek and recover the rest from X in a court action. X would be held liable for $95,000 but could not seek contribution from the plaintiff's brother for $45,000.
16. PROSSER, TORTS § 46 (4th ed. 1971).
17. *Id.* § 47.
18. *Id.* § 49.
19. *Id.*

A distinct line of history underlies the law of subsequent independent tortfeasors. Under rules of proximate cause, an original tortfeasor is liable for the consequences of his negligence, including the subsequent negligence of a treating physician, provided the physician was chosen with reasonable care.[20] A subsequent independent tortfeasor is liable only for the part of the injury which he caused.[21]

In the *Harris* case, death was the single, indivisible injury, and the court properly applied the statutes concerning joint tortfeasors to the defendants. The court's reliance on *Feiser* is misleading because that case is a part of the law concerning subsequent independent tortfeasors. *Feiser* involved a release which was signed when the plaintiff was not aware of an injury which would later require hospitalization and surgery.[22] The negligent actions of the doctor and hospital occurred after the signing of the release and produced a separate injury. The doctor and the hospital were subsequent independent tortfeasors and were liable for their negligent action which further complicated the plaintiff's injury.

In order for two persons to become joint tortfeasors, each of their negligent acts must be shown to be a direct cause of the single injury. Once this is established, notions of proximate or remote cause and supervening cause are no longer applicable.[23] The Wyoming court did not address the issue of causation, probably because the plaintiff must show causation at the trial level first.

THE RELEASE

One cause of action against joint tortfeasors meant that a plaintiff could recover only one judgment under common law, and even though that judgment might be unsatisfied,

20. Stuart v. Hertz Corp., 351 So.2d 703, 707 (Fla. 1977).
21. Gonzales v. Peterson 57 Wash. 2d 676 , 359 P.2d 307, 311 (1061), (damages attributable to physician were pain and suffering that would have otherwise been avoided), Pederson v. Eppard, 181 Minn. 47, 231 N.W. 393, 394 (1930) (physician was liable only for the damages which his negligence caused), PROSSER, TORTS § 52 at 321, 321.
22. Feiser v. St. Francis Hospital and School of Nursing, Inc., *supra* note 10, at 147.
23. Sheehan v. New York 40 N.Y. 2d 496, 387 N.Y.S. 2d 92, 354 N.E. 2d 832, 835-836 (1976).

it barred any later action against another joint tortfeasor.[24] A release, which is a surrender of a cause of action, necessarily released the other joint tortfeasors.[25] Until recently, that rule was applied to joint tortfeasors who were liable for the same injury.[26]

Today, courts and state legislatures have realized the inconsistency and inequity of compelling the plaintiff to give up the opportunity of settling with one joint tortfeasor because he would thereby lose his cause of action and be without complete compensation. Many states have enacted statutes which prevent a release from discharging a second tortfeasor unless the terms of the release so provide.[27]

A similar result has occurred with regard to the effect of a release given to an original tortfeasor upon the liability of subsequent independent tortfeasors. At first, since full recovery could be obtained from the original wrongdoer under the theory of proximate cause, a release given to that wrongdoer also released the attending physician from liability, even though the plaintiff had not been fully compensated for his harm.[28] Exceptions to this rule were allowed when the physician's actions caused a new injury or when the physician was guilty of gross negligence.[29]

Today, a growing number of courts have held that a release by an injured party of one responsible for the injury does not of itself, in the absence of such intent on the part of the party, preclude an action against a physician for subsequent negligent treatment unless there has been full compensation in fact for the injuries.[30] The rationale behind this charge is that there are two distinct causes of action because the acts were different in nature and time and produced two separate injuries.[31] Unless the injured plaintiff has been compensated for the entire wrong, he should be

24. PROSSER, TORTS § 48.
25. *Id.* § 49.
26. *Id.*
27. *Id.*, WYO. STAT. § 1-1-113 (1977).
28. Annot., 39 A.L.R.3d 260, 266 to 268 (1971).
29. *Id.* at 273 to 274.
30. *Id.* at 273 to 274.
31. Ash v. Mortensen, 24 Cal. 2d 654, 150 P.2d 876, 877 (1944).

able to seek action against subsequent tortfeasors for compensation of the injury they caused.

The two lines of history have reached the same conclusion. A release will not work to discharge a joint tortfeasor nor a subsequent independent tortfeasor. But the extent of liability has not changed. A joint tortfeasor is still liable for the entire harm,[32] while a subsequent independent tortfeasor is only liable for his contribution to the harm.[33]

CONTRIBUTION AMONG MULTIPLE DEFENDANTS

History justifies the rule that a release will not discharge a joint tortfeasor's liability. But in all fairness, it would also seem appropriate that the joint tortfeasors share the burden of compensation for the plaintiff's injury. The Wyoming legislature has provided for such a result by adopting Section 1-1-110 which gives joint tortfeasors a right against one another for contribution according to their degree of fault.[34]

The next question must be why a release discharges a joint tortfeasor from liability for contribution. It would seem more in keeping with an equitable division of responsibility to hold that the release of one joint tortfeasor would release his share of the plaintiff's injuries and to hold the second joint tortfeasor liable only for his proportion of the claim.

The original contribution provisions in the Wyoming Statutes seemed to accomplish this. Section 1-7.5 reduced the claim against the other tortfeasors in the amount of the consideration paid for the release.[35] Section 1-7.6 stated that a release relieved the settling joint tortfeasor from lia-

32. WYO. STAT. § 1-1-111(a)(i) (1977).
33. PROSSER, *supra* note 16, at § 52.
34. WYO. STAT. §§ 1-1-110, 1-1-111 (1977), Note that liability is determined according to fault or culpability rather than physical causation. This is of particular importance when the injury sustained is defined by a wrongful death statute and cannot be divided on a causal basis. In Wyoming, damages recoverable for wrongful death are losses resulting to the beneficiary named in the statute. Such losses are loss of support and loss of companionship. Coliseum Motor Co. v. Hester, 3 P.2d 105, 43 Wyo. 298 (1931). The pain and suffering of the decedant has no part in establishing damages. Parsons v. Roussalis, 488 P.2d 1050, 1052 (Wyo. 1971).
35. 1973 WYO. SESS. LAWS Ch. 67 § 1-7.5.

bility to make contribution to another joint tortfeasor only if the release provided for "a reduction to the extent of the pro rata share of the released tortfeasors of the injured person's damages recoverable against all the other tortfeasors."[36] Thus, either the injured person could not recover part of the pro rata share of the settling joint tortfeasor from the other joint tortfeasors, or a joint tortfeasor held liable for more than his pro rata share of the injury could recover the excess from the settling joint tortfeasor in an action for contribution.

The Wyoming Statutes were changed to their present form in 1977, and are essentially similar to the 1955 Uniform Contribution Among Tortfeasors Act.[37] A release now relieves a settling joint tortfeasor from all liability for contribution, and there is no requirement for a pro rata reduction of the plaintiff's recoverable injures. The comments to the revised 1955 Uniform Act give an explanation which is useful in determining the purpose of the change.[38]

The commissioners found the effect of the 1939 Uniform Act had been to discourage settlements because it made it impossible for one tortfeasor alone to take the release and close the file. He would be subject to contribution claims if the release did not have the appropriate pro rata reduction clause, and plaintiffs would not accept a release which contained the clause because they had no way of knowing what they were giving up. Since the commissioners found it more important to encourage settlements than to prevent collusion, they changed the Act to release the settling tortfeasor from all claims of contribution, and to reduce the plaintiff's claim against non-settling joint tortfeasors only in the amount of consideration paid or in the amount stipulated by the release.[39]

The release of the settling joint tortfeasor from liability for contribution would indeed encourage settlements. But to allow an injured plaintiff to reduce his claim only to

36. 1973 WYO. SESS. LAWS Ch. 67 § 1-7.6.
37. Uniform Contribution Among Tortfeasors Act (1955 Revised Act).
38. *Id.* § 4(b) comment.
39. *Id. See also* Note, *Wyoming Contribution Among Joint Tortfeasors*, 9 LAND & WATER L. REV. 589, 623 (1974).

the amount of the consideration for the release goes against the whole underlying policy of the Act, i.e., to distribute the burden among the joint tortfeasors equitably. It certainly encourages the plaintiff to settle, but it also relieves him of the responsibility of seeking an adequate settlement because any inadequacy will be paid for by a non-settling joint tortfeasor.

A middle ground, relieving the settling tortfeasor from contribution and reducing the plaintiff's claim by the tortfeasor's pro rata share, would encourage settlement and also discourage collusion between the plaintiff and settling tortfeasors.[40] Such a requirement would place the burden of an equitable settlement upon the plaintiff and participating joint tortfeasors rather than on the joint tortfeasor who was not a party to the settlement agreement. This requirement would also discourage multiple suits because the advantages to the plaintiff of bringing multiple suits would be reduced.

IN PRACTICE

It is up to the legislature to make the final judgment as to the equity of the Statutes.[41] Meanwhile, the attorney must steer his client around the various pitfalls involved.

A non-settling joint tortfeasor has three possible directions of attack. He may claim that the release was not given in good faith as required by the Statute and therefore discharges other tortfeasors from liability.[42] He may claim that the plaintiff has received full compensation for his damages, which releases the other joint tortfeasors from lia-

40. MacPherson, *Contribution Among Tortfeasors*, 25 AM. U. L. REV. 203, 236 (1975).

41. The California court made an "end run" around contribution legislation by adoption of comparative partial indemnity as a modification of the common law equitable indemnity doctrine. But the court recognized the legislature's intent to encourage settlements, and even under the common law doctrine, the court found that the plaintiff's recovery should be diminished only in the amount that the plaintiff actually recovered in a good faith settlement. American Motorcycle Ass'n v. Superior Court, 146 Cal.Rptr. 182, 578 P.2d 899 (1978). *But Cf.* Fleming, *Report to the Joint Committee of the California Legislature on Tort Liability on the Problems Associated with American Motorcycle Association v. Superior Court*, 30 HASTINGS L. J. 1463, 1498 (1979): "Recommendation 7: [B]ut the plaintiff's claim against the remaining tortfeasors shall be reduced by the amount of the released tortfeasor's share of the loss."

42. WYO. STAT. § 1-1-113(a) (1977). Good faith is a vague term, however, and proof of bad faith may be difficult.

bility.[43] Finally, he may claim that the release was intended to discharge successive tortfeasors.[44]

The practical aspects of this last defense may work in favor of a non-settling joint tortfeasor and against an unwary plaintiff. The Statute states that a release will not discharge other tortfeasors unless "its terms so provide."[45] This indicates a presumption that no release of other joint tortfeasors was intended unless the release so states. Yet a standard general release often contains language which purports to release all claims for a specific harm and can work to release non-settling joint tortfeasors.[46]

After *Harris v. Grizzle*, whether the release acts to discharge joint tortfeasors not parties to the release is a matter of intent.[47] The question is now whether the meaning of the word "terms" in the statute is limited to the written words of the contract or whether it also includes the use of parol evidence to determine intent. In *Natrona Power Co. v. Clark*, the Wyoming court held that the intention of the parties to a release, in the absence of fraud or mistake, must be gathered from the writing.[48] The court also said that the statement that the parole evidence rule has application only in suits between parties to the writing could not be defended on principle.[49] Thus, unambiguous language in a general release that discharges all claims for an injury will probably release other joint tortfeasors regardless of whether that was the true intent of the injured person. The Restatement (Second) of Torts rejects this conclusion and states that "The agreement as to the effect of the release may be proved by external evidence; and the objection of the parol evidence rule is met by the fact that the second tortfeasor who raises the question is not a party to the instrument."[50]

43. Harris v. Grizzle, *supra* note 1, at 586.
44. *Id.*, WYO. STAT. § 1-1-113(i) (1977).
45. WYO. STAT. § 1-1-113(i) (1977).
46. Hasselrode v. Gnagey, 404 Pa. 549, 172 A.2d 764, 765 (1961), (decided under Uniform Contribution Among Joint Tortfeasors Act).
47. Harris v. Grizzle, *supra* note 1, at 586.
48. Natrona Power Co. v. Clark, 31 Wyo. 284, 225 P. 586 (1924).
49. *Id.* 225 P. at 589.
50. RESTATEMENT (SECOND) OF TORTS § 885. comment d. There is a split of authority in this regard. See Annot., 13 A.L.R.3d 313 (1967), citing Natrona Power Co. v. Clark, *supra* note 48, at 13 A.L.R.3d 336.

CONCLUSION

Under the Wyoming Contribution Among Joint Tortfeasors Act,[51] the court in *Harris v. Grizzle* decided that a release given to one joint tortfeasor would not discharge another joint tortfeasor liable for the same wrongful death unless that was the intent of the parties to the release or unless consideration for the release constituted full compensation of the plaintiff's injuries. The Act, however, works an injustice upon the non-settling joint tortfeasor who becomes liable for the remaining damages without recourse to contribution from the settling joint tortfeasor. To prevent this injustice and to discourage collusion between the plaintiff and settling joint tortfeasors, the statute should be changed to permit the plaintiff to seek recovery from non-settling joint tortfeasors for only those joint tortfeasors' pro rata share of the injury.

LORETTA B. KEPLER

51. WYO. STAT. §§ 1-1-110 to 1-1-113 (1977).