

1976

Carrie M. Carter v. Raymond D. Kingsford and Transnational Insurance Co. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

CARRIE M. CARTER, /
Plaintiff and /
Appellant, /
vs. / Case No. 14516
RAYMOND D. KINGSFORD and /
TRANSNATIONAL INSURANCE /
COMPANY, /
Defendants and /
Respondents. /

BRIEF OF APPELLANT

Appeal from the Judgment of the
District Court of Weber County,
Honorable John F. Wahlquist

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COMPANY,	/	
Defendants and	/	
Respondents.	/	

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action brought by the appellant, the plaintiff in the Lower Court, against the respondents to set aside a release of liability entered into between appellant and a representative of respondent, Transnational Insurance Company, and to recover damages resulting from an automobile accident with respondent, Kingsford. Appellant alleges the release should be set aside on the grounds that a mutual mistake of fact induced its execution.

STATEMENT OF FACTS

Appellant was driving her automobile westbound on 24th street approaching the intersection with Orchard Avenue

in Ogden on April 26, 1971. The respondent, Raymond D. Kingsford, was driving eastbound on 24th Street, approaching the same intersection when he began making a left turn in front of the appellant when a collision occurred, with resulting injuries to the appellant and damage to her vehicle. (R-23). Following the accident, and until the execution of the release on July 14, 1971, appellant was under medical treatment of her family physician, David P. Jahsman, M.D. (R-28). On July 14, 1971, after Dr. Jahsman informed appellant that all x-rays taken of her neck and shoulder were normal and she had no other injuries, (R-111) appellant executed the release with Transnational Insurance Company without seeking advice of counsel (R-29) and received a settlement of \$3,334.09. (R-135).

Subsequently, in September of 1972, appellant developed headaches and a numbness in her right arm which again required her to seek the aid of a physician. (R-112). Appellant was treated by Dr. Jahsman until November, 1974, when a neurosurgical consultation with Dr. C. D. Van Hook for the first time showed appellant had suffered a cervical herniated disc. (R-14). In January 1975, a surgical intervention was necessitated requiring fusion of C5-6, which Dr. Jahsman stated was proximately necessitated by reason of the accident of 1971. (R-121).

ARGUMENT

POINT I

THE APPELLANT, HAVING NO AWARENESS OF SERIOUS SPINAL INJURY, CANNOT BE HELD TO BE BOUND BY A RELEASE OF LIABILITY.

Dr. David P. Jahsman treated appellant for a "Cervical Contusion", or bruise to her neck, from the date of the accident until she was authorized to return to work (R-120). Appellant executed a release six (6) weeks after the accident only after being told by Dr. Jahsman she only had a neck strain, that all x-rays taken were normal, i.e., that she did not have any other medical problems (R-112). Dr. Jahsman's report is further indicative of this fact when he notes that there was no indication or reason for a prognosis of the need for possible surgical repair for plaintiffs injury (R-121).

In granting respondents Motion for Summary Judgment, the Court concluded, without benefit of any testimony, that "There is no way of knowing exactly if appellant's discs were herniated during the accident..." (R-114). Additionally, the Court, after noting appellant was treated for a stiff neck, concluded this was synonomous with her having knowledge that she had a herniated disc (R-114). In Reynolds vs Merrill,

460 P2d 323, (1969), plaintiff was injured when a car rear-ended the one he (plaintiff) was operating. The plaintiff was treated for bursitis for two and one half (2½) months prior to signing a general release of liability. Subsequently, plaintiff continued to suffer from reoccurring pains. After numerous inconclusive tests were given, plaintiff was finally referred to an orthopedic specialist and at that time the injury was finally diagnosed as a herniated disc which was subsequently fused. The trial court granted a Motion for Summary Judgment dismissing the complaint because of the release. In reversing that ruling, the court noted, at page 324:

"The trial court believed that the plaintiff had lost all rights against the defendant by reason of the release given, and he entered a Summary Judgment dismissing the complaint. In doing so, he failed to distinguish between an unknown injury and unknown consequences of a known injury. The former can be the basis of a mutual mistake of fact, while the latter would be only a mistake of opinion."

The case under current consideration is very similar to the Reynolds case. In both the Reynolds case and this one, plaintiffs were treated by family physicians who, after a limited period of time informed their patients they had nothing of a serious nature wrong with them. In

each case, this information from the treating physicians induced the signing of the releases. In each case, after the releases were signed, physical symptoms developed which finally led the original treating physician to refer the plaintiffs to orthopedic specialists. In each case, the specialists diagnosed herniated discs as the cause of the problems and spinal fusions were performed resulting in permanent partial disability.

It is submitted that the main difference between the cases, is that in the present case the plaintiffs injury was diagnosed as a bruise to the neck, while in the Reynolds case, it was diagnosed as bursitis. This Court held that in Reynolds, at page 326:

"In the instant case the plaintiff does not contend that he should have the release set aside if it is shown that he actually intended to settle for all injuries. He here is asking for a day in court to establish, if he can, that there was a mutual mistake of fact regarding the injury which actually was in existence but which was unknown to both him and the insurance adjuster."

POINT II

A MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED TO RESPONDENT WHEN FACTS BEFORE THE COURT PRESENT TRIABLE ISSUES.

The appellant submits to the Court that Motion

for Summary Judgment should not have been granted to the respondent. This Court in often stated positions on the granting of a Motion for Summary Judgment has reasoned it's only where it is perfectly clear that there are no issues in the case, that Summary Judgment is proper.

In Dupler vs. Yates, 10 Ut.2d 251, 351 P.2d 624 (1959), this Court stated at page 636:

"Rule 56, Utah Rules of Civil Procedure, is not intended to provide a substitute for the regular trial of cases in which there are disputed issues of fact upon which the outcome of the litigation depends, and it should be invoked with caution to the end, that litigants may be afforded trial where there exists between them a bona fide dispute of material fact."

The Utah Supreme Court stated in Samms vs. Eccles, 11 Ut.2d. 289; 358 P.2d. 344:

"That some claims may be spurious, should not compel those who administer justice to shut their eyes to serious wrongs and let them go without being brought to account. It is a function of Courts and Juries to determine whether claims are valid or false. This responsibility should not be shunned merely because the task may be difficult to perform."

and finally, in Frederick May & Company, Inc. vs. Dunn, 13 Ut.2d 40, 368 P.2d 266, (1962), this Court stated:

"To sustain the Summary Judgment, the pleadings, evidence, admissions, and inferences therefrom,

viewed most favorably to the loser, must show that there is no genuine issue of material fact, and that the winner is entitled to a Judgment as a matter of law. Such showing must preclude as a matter of law, all reasonable possibility that the loser would win if given a trial."

CONCLUSION


It is submitted to this Honorable Court that the Lower Court erred in granting respondents Motion for Summary Judgment in that there were questions of fact at issue basic to a final rendering of Judgment in this action.

Appellant executed the release only after being informed by the treating physician that all x-rays were normal and that she only had a stiff neck and shoulder. Her belief that she had no other injuries induced her to execute the release without her knowledge of the herniated disc which was not discovered until an orthopedic specialist examined her. Questions of fact which should be determined at trial are whether the disc was herniated in the accident, or was a result of gradual degenerations and whether or not her knowledge that she had a bruised neck should be equated as knowledge on her part of a herniated disc.

Appellant is asking for the opportunity of proving that at the time of signing the release she had a herniated


disc which neither she nor the insurance adjuster knew about;
that the herniated disc was an unknown injury and not a
known injury with unknown consequences.

Respectfully submitted,


J. KEITH HENDERSON
Attorney for Appellant

CERTIFICATE OF MAILING

A copy of the foregoing Brief of Appellant was posted in the U.S. mail postage prepaid and addressed to the Attorney for the Respondent, D. Gary Christian, Esq., 520 Boston Building, Salt Lake City, Utah 84111, on this 23rd day of June, 1976.



Judith A. Cabrey, Secretary