

1950

# Gary Rogers by Ralph A. Rogers v. Jo Ann Wagstaff, Paul L. Wagstaff and W. E. Lemmon : Brief of Appellant

Utah Supreme Court

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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GARY ROGERS, by his Guardian ad  
litem, RALPH A. ROGERS,

*Plaintiff and Appellant,*

vs.

JO ANN WAGSTAFF, PAUL L.  
WAGSTAFF and W. E. LEMMON,

*Defendants and Respondents.*

**FILED**

NOV 28 1950

Clerk, Supreme Court, Utah

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**APPELLANT'S BRIEF**  
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GUSTIN, RICHARDS & MATTSSON  
FRED H. EVANS

*Attorneys for Plaintiff  
and Appellant*

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Case No. 7586

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APPELLANT'S BRIEF

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STATEMENT OF FACTS

The plaintiff, by his Guardian ad litem duly appointed by order of court (R. 1), brought this action to recover damages resulting from an accident wherein the defendant Jo Ann Wagstaff drove a motor vehicle against the plaintiff, who was then a pedestrian on a public highway. The plaintiff joined as a defendant one W. E. Lemmon, father of the defendant Jo Ann

Wagstaff, who had signed and verified before a proper person authorized to administer an oath the application for an operator's license for the said Jo Ann Wagstaff prior to the date of the accident. The defendant Jo Ann Wagstaff had on a day prior to the accident and while under the age of eighteen years married the defendant Paul L. Wagstaff.

In response to plaintiff's complaint, defendant W. E. Lemmon filed a motion for summary judgment (R. 10). In support of the said motion, the affidavit of W. E. Lemmon (R. 7), with a copy of the operator's application and notification of change of name (R. 9), was filed, which set forth the fact that prior to said accident Jo Ann Wagstaff had been placed in the custody of Mrs. W. E. Lemmon by virtue of a decree of divorce, and further that the said Jo Ann Wagstaff had been married at the time of the accident. This defendant's affidavit concluded that, because of the aforesaid facts, there was no responsibility on his part by virtue of the provisions of 57-4-12, Utah Code Annotated, 1943. Defendant Jo Ann Wagstaff filed a similar affidavit (R. 5), which set forth the same facts.

The motion for summary judgment was granted by the court (R. 14). The plaintiff thereafter filed a petition for intermediate appeal. The court granted the appeal by an order dated the 25th day of September, 1950 (R. 15).

## STATEMENT OF POINTS

That the responsibility imposed by the statute is not affected by the marriage of an applicant under the age of eighteen years, or a change in the custody of an applicant by virtue of a decree of divorce, therefore, the court erred in granting a summary judgment.

## ARGUMENT

THAT THE RESPONSIBILITY IMPOSED BY THE STATUTE IS NOT AFFECTED BY THE MARRIAGE OF AN APPLICANT UNDER THE AGE OF EIGHTEEN YEARS, OR A CHANGE IN THE CUSTODY OF AN APPLICANT BY VIRTUE OF A DECREE OF DIVORCE, THEREFORE, THE COURT ERRED IN GRANTING A SUMMARY JUDGMENT.

The right of a person under the age of eighteen years to drive a motor vehicle upon public highways is subject to the conditions set forth in Title 57, Chapter 4, Section 12, Utah Code Annotated, 1943. The statute provides as follows:

“57-4-12. Application of Minors—Liability of Person Signing Application.

(a) The application of any persons under the age of eighteen years for an instruction permit or operator's license shall be signed and verified before a person authorized to administer oaths by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother or guardian having custody of such minor, or in the event that a minor has no father, mother, or guardian,

then an operator's license shall not be granted to the minor unless the application is signed by an employer of such minor or by some other responsible person who is willing to assume the obligation imposed under this act upon a person signing the application of a minor.

(b) Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct (except as otherwise provided in the next succeeding subsection).

(c) In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if not the owner of a motor vehicle, then with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the department may accept the application of such minor when signed by one parent or the guardian of such minor, and while such proof is maintained such parent or guardian shall not be subject to the liability imposed under the preceding subsection of this section.

(d) Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person

who signed the application of such minor shall be relieved from the liability imposed under this act by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

(e) The department upon receipt of satisfactory evidence of the death of the person or persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this act. This provision shall not apply in the event the minor has attained the age of eighteen years.

(f) All operators' licenses issued to persons who are under the age of eighteen years at the effective date of this act are hereby canceled until they have been duly reapplied for as provided in this section."

The court below, in granting the motion for summary judgment, imposed upon the term "minor", as used in the above quoted statute, the terms of Title 14, Chapter 1, Section 1, Utah Code Annotated, 1943, which states as follows:

"14-1-1. Period of Minority.

The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years; but all minors obtain their majority by marriage."

The primary rule of construction of statutes is to ascertain and declare the intention of the legisla-



ture and carry such intention into effect to the fullest degree. See 50 *Am. Jur.* 200; 33 *Corpus Juris* 522. It is equally clear that while a statute is not open to construction as a matter of course, it is open to construction where the language used in the statute is ambiguous or will bear two or more constructions, or is of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning.

The difficulty encountered in the interpretation of the statute is the alternate use by the legislature of the term "person under the age of eighteen years" and the word "minor". By the simple expedient of reading the word "minor" in reference to the provisions of 14-1-1, Utah Code Annotated, 1943, it is concluded that "minor" must exclude married women under the age of eighteen years of age. This expediency fails to give effect to the legislative will in enacting the statute.

In section (a) the statute is explicit that the application of any person under the age of eighteen years who applies for an operator's license must be signed by a person who is the parent of the applicant or one who has custody of the minor. In section (b) the statute states that a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application and again in section (c) the statute merely used the word "minor". The reason-

able and logical interpretation of the meaning of the word "minor" can only be that it was intended to be a person of eighteen years or under. If the word is to be defined as defendant contended, in section (c) the word "minor" could mean a male person of nineteen years, which is obviously not the intention of the statute. The same may be said for sections (d) and (e) where the word "minor" is used alone. In section (f) the words used by the legislature are "persons under the age of eighteen years." It should be noted the latter phrase was used in both the opening and closing paragraphs of the statute. If a clear and uniform interpretation is given to the word "minor", it obviously must mean a person under the age of eighteen years. This gives force and effect to what is the significant purpose of the legislature in enacting the statute. The Utah Court in *Taft vs. Glade et al.*, (Utah), 201 Pac. 2d 285, decided in 1948, stated:

"It is our duty in interpreting a statute to give effect to the legislative intent as expressed by the wording of the statute. If reasonably possible effect should be given to every part of a statute and if the enactment is subject to one or more interpretations by reason of conflicting provisions, then that construction which will harmonize and give effect to all provisions is preferred."

It is a well recognized principle that the legislature may regulate and restrict the operation of motor

vehicles by certain persons where such regulation and restriction is reasonable. Authority need not be cited supporting the validity of statutes restricting the operation of motor vehicles by those persons under the age of eighteen years. The real gist of such statutes is to set out a standard of ability required before a person may operate a motor vehicle, that the public, in its use of the highways, may rely upon others driving motor vehicles to conform to a definite standard of care in their operation. The legislature makes the proviso, however, that if a responsible person is willing to vouch financially that a person under eighteen has the required skill and carefulness, then it is provided that they may drive a motor vehicle on public roads. The foregoing proposition is amply supported by authorities. In *Bispham vs. Mahony*, (Del.), 175 Atl. Rep. 320, the court there stated as follows:

“The right to operate a motor vehicle upon the public highways is not an unrestricted right, but is a privilege exercisable within reasonable legislative limitations, and, subject to the Federal and State Constitutions, the Legislature, under the police power, may regulate and control by reasonable rules and regulations the use of motor vehicles upon its highways, *Michigan Public Utilities Commission v. Duke*, 266 U.S. 570, 45 S.Ct. 191, 69 L. Ed. 445, 36 A.L.R. 1105, and as the operation of a motor vehicle on congested highways requires both physical and mental discretion, especially in cases of emergency, experience teaches that children, generally speaking, do not possess these qualifications. *Collins v. Liddle*, 67 Utah 242, 247 P. 476. It

is within the power of the State to require that an applicant for an operator's license shall not be younger than a prescribed age. 42 C. J. 740, 745. Generally, the prescription of the age of eighteen years before which a license to operate a motor vehicle may not be granted is not an arbitrary and unreasonable exercise of the police power as violative of the State or Federal Constitutions which forbid the taking of private property without due process of law. State ex rel. Oleson v. Graunke, 119 Neb. 440, 229 N. W. 329.

Granting, therefore, the right of the State to restrict the issuance of licenses to operate a motor vehicle to those who have reached a prescribed age, it follows that the State has the power to license those under that age, upon meeting required tests as to ability, and to require the consent of parent, guardian or employer thereto."

Other jurisdictions have a clear and definite statement of the intention of the legislature in statutes creating financial responsibility. They are of value here in that they give credit to plaintiff's theory that the legislature intended to protect the public and has adopted the age of eighteen as the time at which a person should be held to an adult standard of care. The California case of *Easterly vs. Cook*, 35 Pac. 2d 164, states as follows:

"We are of the opinion the statutory liability is imposed upon the signer of the application for an operator's license by a minor, independent of the general liability of a parent for the

torts of his minor child, on the theory that an automobile is a dangerous instrumentality, the operation of which may not ordinarily be safely intrusted to a minor child on account of a lack of judgment on his part. This liability is deemed to cover the operation of the machine during the years of indiscretion of the minor, and until he reaches the age of majority, regardless of the continued control of the conduct of the minor by the signer of the application, unless the license is canceled pursuant to subdivision (e) of section 62 of the California Vehicle Act. The liability created by that section is not dependent upon the continued authority of the signer of the application. It is a guarantee of compensation for the negligence of the child during minority."

The criterion to be used, as shown by the authorities, is the protection of the public. The legislature in enacting Title 57 could not have intended that the mere fact of marriage gave the right to drive an automobile. If such were the case, then a female married at sixteen could drive on the public highways without affording any protection to the public. The financial responsibility section was added by the Laws of 1935 and became effective January 1, 1936 after experience taught that people of the age of sixteen and seventeen years did not exercise the required care and were not financially responsible. If Section 1, Chapter 1, Title 14, is read into the statute, the ludicrous situation of a married female having a right to drive, regardless of whether she had attained the age of sixteen years, occurs. It

is manifest that this was not the intention of the legislature in enacting the section of the statute.

The courts have in many instances declared that the mere fact of marriage of one under a specific age does not create an adult status in all respects. An analogous situation is present in the criminal law. In the case of *State vs. Huntsman*, (Utah), 204 Pac. 2d 448, decided in 1949, the court held that the purpose of statutes establishing the age of consent is to protect young girls from illicit acts of opposite sex, and that a female under eighteen years of age does not by marriage become capable of consenting to illicit sexual intercourse so as to bar prosecution of male participant in such act under carnal knowledge statute.

If the word "minor" is construed to exclude a married woman under the age of eighteen years, the interpretation leads to unnecessary technicalities. The words and phrases of statutes are presumed to have been used according to the plain, natural and common usage of language, unless obviously used in a technical sense. See *Parkinson vs. State Bank of Millard County et al.*, 84 Utah 278, 35 Pac. 2d 814. The common, obvious and important meaning of the word "minor" is a person under a prescribed age, in the instant case, a female person under the age of eighteen years.

The respondent W. E. Lemmon, in his affidavit in support of his motion for summary judgment, urged the proposition that because the defendant Jo Ann Wagstaff had, prior to the accident, been placed in

the custody of Mrs. Lemmon, her mother, by virtue of a decree of divorce, he was relieved of any further responsibility under Title 57, Chapter 4, Section 12.

In the California case of *Sgheiza vs. Jakober et al.*, 22 Pac. 2d 19, the court refused to relieve the defendant therein from financial responsibility under a similar statute where a divorce decree had given custody to the father where the mother (the defendant in that case) had signed the application for license of a child under eighteen years. The import is that a change in the legal custody of a minor should not effect the responsibilities imposed by the statute.

The statute itself in section (d) provides for the manner in which a person, who had signed an application, can be relieved of responsibility. Where the statute provides specifically for the manner in which a person may be relieved, it cannot be presumed that the mere fact that the applicant's legal custody has been changed could relieve the person from that financial responsibility without conforming to the terms of the statute.

The meaning and interpretation of the word "minor", as used in Title 57-4-12, means any person under the age of eighteen years. If such meaning is attached to the word, the statute is rid of inconsistency and ambiguity. Moreover, the interpretation gives force and effect to the obvious intention of the legislature, that being the determination of the age at which a person may reasonably be held to a degree of care

required for the protection of the public, and where, because of age, that standard cannot be presumed to be maintained then the use of the highways is conditioned upon proof of financial responsibility.

The mere fact of marriage or change in custody does not supply the requirement. To the contrary, it may limit a person's ability to respond for damage caused by carelessness. The statute clearly provides for the method of one seeking to be relieved of such responsibility and he may not adopt another means at his own convenience.

We respectfully submit that the judgment of the District Court should be reversed.

Respectfully submitted,

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and Appellant.*