

1950

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

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.*

Case No.  
7586

**FILE**  
DEC 28 1950

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**RESPONDENTS' BRIEF** Clerk, Supreme Court, U

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Respondents.*

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# TABLE OF CONTENTS

	Page
STATEMENT OF FACTS .....	1
STATEMENT OF POINTS:	
THAT THE RESPONSIBILITY IMPOSED BY THE STAT- UTE (57-4-12 Utah Code Annotated, 1943) IS AFFECTED BY THE MARRIAGE OF AN APPLICANT UNDER THE AGE OF EIGHTEEN YEARS OR A CHANGE IN CUSTODY OF AN APPLICANT BY VIRTUE OF A DECREE OF DI- VORCE, THEREFORE, THE TRIAL COURT DID NOT ERR IN GRANTING A SUMMARY JUDGMENT .....	1, 2
ARGUMENT .....	2
CONCLUSION .....	15

## CASES CITED

Easterly v. Cook, 140 Cal. App. 115; 35 P. 2d 164 .....	8
Hannabass v. Ryan, 164 Va. 519; 180 SE 146 .....	12
Hill v. Harris, 87 NE 2d 97, 101 .....	12
Houston v. Holmes, 202 Miss. 300, 303; 32 So. 2d 138, 139 .....	11
Sommers v. Van Der Linden, 24 Cal. App. 2d 375, 378, 379; 75 P. 2d 83, 85, 86 .....	13
Taft v. Glade, et al, ..... Utah .....; 20 P. 2d 285, 287 .....	14
Weber v. Punyan, 9 Cal. 2d 226, 229; 70 P. 2d 183, 185 .....	12

## STATUTES CITED

Utah Code Annotated, 1943	
Sec. 57-4-12 (subsections a, b, c, d, e, f) .....	2, 3, 4, 13, 15
57-4-7 subsection (a) .....	6
57-4-8 subsection (b) .....	7
57-4-3 subsection (d) .....	4
Sec. 14-1-1 .....	4, 5
Oregon Compiled Laws Annotated, 1939	
Paragraph 115-209 — Volume 8 .....	7
Paragraph 63-502 — Volume 5 .....	8
California Motor Vehicle Code	
Section 25 .....	8
Section 350 .....	9, 10

# IN THE SUPREME COURT of the STATE OF UTAH

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GARY ROGERS, by his Guardian ad  
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## RESPONDENTS' BRIEF

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### STATEMENT OF FACTS

Respondents accept the Statement of Facts as given by Appellant except that the action was to recover damages resulting from an accident *and in plaintiff's complaint it is alleged that the defendant Jo Ann Wagstaff drove a motor vehicle against plaintiff.* (R. 2)

### STATEMENT OF POINTS

THAT THE RESPONSIBILITY IMPOSED BY THE STATUTE (57-4-12 Utah Code Annotated 1943) IS AFFECTED BY THE MARRIAGE OF AN APPLICANT UNDER THE AGE OF EIGHTEEN YEARS OR A CHANGE IN CUSTODY

OF AN APPLICANT BY VIRTUE OF A DECREE OF DIVORCE, THEREFORE, THE TRIAL COURT DID NOT ERR IN GRANTING A SUMMARY JUDGMENT.

### ARGUMENT

THAT THE RESPONSIBILITY IMPOSED BY THE STATUTE (57-4-12 Utah Code Annotated 1943) IS AFFECTED BY THE MARRIAGE OF AN APPLICANT UNDER THE AGE OF EIGHTEEN YEARS OR A CHANGE IN CUSTODY OF AN APPLICANT BY VIRTUE OF A DECREE OF DIVORCE, THEREFORE, THE TRIAL COURT DID NOT ERR IN GRANTING A SUMMARY JUDGMENT.

It is defendants' contention that upon the marriage of Jo Ann Wagstaff, said Jo Ann Wagstaff became under the law an adult person fully responsible for her own acts, and that the provisions of Section 57-4-12, Utah Code Annotated, 1943, pertaining to the application of *minors* under the *age of 18 years* for driver's licenses is not applicable. Section 57-4-12, Utah Code Annotated, 1943, provides as follows:

“(a) The applications 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 cancelled. 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 cancelled until they have been duly reapplied for as provided in this section.”

It should be noted that the provisions of this statute use the wording “minor” and “eighteen years.” Before this section can be made applicable, it is only logical that both of these terms should be given effect. Appellant’s contention that the word “minor” should be given no effect at all is entirely without reason. It should be noted that in the act relating to the licensing of motor vehicle operators and chauffeurs, Section 57-4-3, Utah Code Annotated, 1943, provides definitions for some of the terms used therein. It should be further noted that the word “minor” is not defined specifically for purpose of this act. However, under the terms of 57-4-3, subsection (d) the term “person” is defined. Said section provides:

“PERSON. Every natural person, firm, co-partnership, association or corporation.”

It must be assumed that the legislature intended some meaning to be given to the term “minor,” therefore, it is necessary that we seek the definition of that term as used in Section 14-1-1, Utah Code Annotated, 1943, to-wit:

“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.”

Respondents agree with the statement made by Appellant that the primary rule of construction of statutes is to ascertain and declare the intention of legislature and to carry such intention into effect in the fullest degree. (See Appellant's brief, pages 5 and 6). By thus giving effect to each portion of the statute, particularly the wording “minor” and “eighteen years,” it is evident that a married woman, even though under eighteen years of age, would not be subject to the provisions of Section 57-4-12, Utah Code Annotated, 1943, the statute which imputes the negligence of a minor to the person who signed the application for his driver's license. Appellant states on page 7 of its brief:

“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.”

Appellant has again forgotten that the wording of the statute should be followed wherever it is clear and the statute specifically states, “*a minor under the age of eighteen years.*” Therefore, a male person nineteen years of age would obviously not come within the terms of the statute.

This precise question, as far as counsel can determine, has never been decided in any other jurisdiction.



However, the statutes and cases which bear on questions relating to this point, give us a full insight into the intention of the legislature. The legislature, if it intended that *every person* (as defined in the act) under the age of eighteen years should be required to have their application signed by a responsible person, as set forth in the act, would have used the word "person" rather than interposing the term "minor" throughout the statute. *The word "person" is adequately defined in the driver's license act and has been used in other portions of the act.* Appellant on page 10 of its brief states as follows:

"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."

The only ludicrousness mentioned herein is Appellant's statement, for it is apparent that he has failed to read the driver's license act. Section 57-4-7 Utah Code Annotated, 1943, Subsection (a) provides:

"An operator's license shall not be granted to any *person* under the age of sixteen years and a chauffeur's license shall not be granted to *any person* under the age of eighteen years."

It is obvious from the reading of this statute and the definition set up by the legislation of the term *person* that sixteen years of age is the minimum requirement for an operator's license and eighteen years the minimum requirement for a chauffeur's license. The legislature when

it intended to include everyone or exclude everyone from the terms of the driver's license act has used the word "person." This is apparent in Section 57-4-8, Subsection (b) which reads as follows:

"No *person* who is under the age of twenty-seven years shall drive any school bus \* \* \*."

The word "minor" must be given some meaning for the simple reason that it clearly indicates a different connotation than the word "person." The position of respondents is supported by authorities in other states. The Oregon legislature in 1939, aware of the very question which is now before this court, amended their law to substitute the word "person" for the word "minor." (Laws of 1939 c 354, par. 4). Paragraph 115-209, Volume 8, Oregon Compiled Laws Annotated, 1939, now reads as follows:

"The Secretary of State shall not grant the application of any person under the age of eighteen years for an instruction permit, operator's license, or a special permit to operate motor vehicles unless such application is signed by the father of the applicant, if the father is living and has custody of the applicant, otherwise, by the mother or guardian having the custody of such *person*, or, in the event a *person* under the age of eighteen years has no father, mother, or guardian, then an operator's license shall not be granted to such *person*, unless his application therefore is signed by his employer."

The Oregon legislature made this change cognizant

of Paragraph 63-502, Volume 5, Oregon Compiled Laws Annotated, 1939, which gives substantially the same definition of minority as Section 14-1-1 Utah Code Annotated, 1943. Said section provides:

“All female persons shall be deemed to have arrived at the age of majority upon their being married according to law \* \* \*”

Appellant cites the case of *Easterly v. Cook*, 140 Cal. App. 115, 35 P. 2d 164, to sustain its position. In this case the court held that the fact that a female person under the age of eighteen had married did not relieve the person who had signed her operator's license from responsibility for the negligent or willful misconduct of said female person. However, to arrive at an understanding of the court's decision, it is necessary that the California law be recognized. Section 25 of the California Civil Code at the time this case was decided read as follows:

“Minors are all persons under twenty-one years of age; provided, that this section shall be subject to the provisions of the titles of this code on marriage and shall not be construed as repealing or limiting the provisions of section 204 of this code; provided, further *that any female who has contracted a lawful marriage and is of the age of eighteen or over, shall be deemed to be of the age of majority* and to be an adult person for the purpose of entering into any engagement or transaction respecting property or her estate, or for the purpose of entering into any contract, the same as if she was twenty-one years of age.”

Furthermore, the California Motor Vehicle Code takes into consideration the question which is now before this court. California Motor Vehicle Code, Section 350, reads as follows:

“(a) (Persons deemed minors: Signing and verification of application by parents, parent, guardian or custodian). *For the purposes of this section, all persons under twenty-one years of age, except eighteen years of age or over who have been married, shall be deemed to be minors.* No application for an operator’s or chauffeur’s license shall be granted by the department to any minor unless such application is signed and verified by the father and mother of such minor, if both father and mother are living and have custody of the minor; provided, however, that

“1. If neither parent is living or has custody the application shall be signed and verified by the guardian; or if there is no guardian, by a person having custody of the minor.

“2. If only one parent is living or has custody, the application shall be signed and verified by such parent.

“(b) (Married minor under 18) If a minor under the age of 18 years is married, the application may be signed and verified by the adult spouse of such minor or by the parents of either spouse or in lieu of such signature, such minor may file proof of ability to respond in damages as provided in section 414 of the Vehicle Code.

“(c) (Where required signers are nonresidents or the minor is emancipated) If the person or persons required to sign and verify the application of a minor, are not residents of this State, or if such minor is emancipated other than by marriage, the department may accept an appli-

cation signed and verified by the minor and accompanied by proof of ability to respond in damages, as provided in section 414 of the Vehicle Code.

“(d) (Suspension of license on failure of proof of ability to respond in damages) If, at any time during the minority of the person who has given proof of ability to respond in damages, such proof shall fail, then the department shall forthwith suspend such license until proof of such licensee’s continued ability to respond in future damages has been given or until such minor has otherwise complied with the requirements of this code relative to the issuance of an operator’s or chauffeur’s license.

“(e) (Signing and verification only by minor, accompanied by proof of ability to respond in damages) If the person or persons who are hereinbefore required by the provisions of this code to sign and verify the application of such minor give their written consent, the department may accept an application signed and verified only by the minor and accompanied by proof of ability to respond in damages, as provided in section 414 of the Vehicle Code. Such person or persons giving the consent to but not signing or verifying said application, as provided in this section, shall not be subject merely by reason of having given such consent to the civil liability specified in subdivisions (a) and (b) of section 352 hereof.”

Hence, in California a married person under the age of eighteen years is still a *minor*. It is for this reason that the court in the Easterly case refers to the defendant woman as a *minor*, even though she had been married. By such reasoning the imputation of negligence of a

minor under the age of eighteen years would include every "person" under the age of eighteen years. If the Utah legislature had intended that such a position be incorporated into the Utah law, it would have been very simple for them to have said so. However, their express language definitely indicates their intention to exclude such a proposition.

Even though this particular question has never been decided in other jurisdictions, there are cases which have dealt with this section regarding the imputation of negligence. In the case of *Houston v. Holmes*, a Mississippi case, 202 Miss. 300, 303, 32 So. 2d 138, 139, the court held that a father who had signed the original license for his son but not a renewal license, that the negligence of the son thereafter could not be imputed to the father. The court states at page 139 (So. 2d) as follows:

"Statutes in derogation of the common law, are, as a general rule, strictly construed. *City of Jackson v. Wallace*, 189 Miss. 252, 259, 196 So. 223. Under which rule, legislation creating a liability where no liability existed at common law should be construed most favorably to the person or entity subjected to the liability, and against the claimant for damages. 50 Am. Jur. Statutes, Sec. 402, P. 426. Such a statutory liability is not to be extended 'beyond that which is clearly indicated by express terms or by necessary implication from the language used;' statutes creating liabilities which did not exist at common law although supposed to be founded on consideration of public policy and general convenience are not to be extended beyond the plain intent of the words of the statute."

In the case of *Hill v. Harris*, 87 N.E. 2d 97, 101, in the court of Common Pleas, the court stated:

“It must be conceded that in the absence of legislation to the contrary Samuel L. Harris, as the father of Robert Harris, and in the absence of agency, would not be liable for a tort committed by his son. Since the legislature has spoken on the subject the language of the statute enacted by it changing the common law rule must be strictly construed \* \* \*”

In the case of *Weber v. Punyan*, 9 Cal. 2d 226, 229, 70 P. 2d 183, 185, the California court stated:

“\* \* \* Since the imputed negligence statute created a new right of action, giving a remedy against a party who would not otherwise be liable, it must be strictly construed. Such was the holding in *Cook v. Superior Court of Los Angeles County* 12 Cal. App. 2d 608, 611; 55 P. 2d 1227, 1228, when the court cited 59 Corpus Juris, P. 1129, reading: ‘A statute creating a new liability, or even a remedial statute giving a remedy against a party who would not otherwise be liable, must be strictly construed in favor of the persons sought to be subject to their operation.’ \* \* \*”

Also see in accord *Hannabass v. Ryan*, 164 Va. 519; 180 S.E. 416.

The Appellant states at page 13 of its brief:

“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.”

The Appellant contends that the filing of a verified written request with the driver's license department of the State Tax Commission is the only means whereby he can be relieved of the responsibility for signing the original application of a minor. Of course, this is not so because the statute explicitly provides that such responsibility ceases upon the department receiving satisfactory evidence of the death of the person who signed the application (57-4-12 (e) UCA, 1943); these provisions do not apply in the event the minor has attained the age of eighteen years (57-4-12 (c) UCA, 1943); furthermore, it has been held in California under a statute similar in purpose to the Utah statute, that the liability of the person who signs it terminated with the expiration of the license. Therefore, if in addition a temporary license or an instruction permit had been signed by the parent, upon the expiration of such a license the liability of the original signer would cease. The California court in the case of *Sommers v. Van Der Linden*, 24 Cal. App. 2d 375, 378, 379; 75 P. 2d 83, 85, 86, states:

“The contention that the legal liability of the parents for the minor's negligence continued beyond the date on which the license expired is not persuasive . . . Since the primary purpose of the application required to be made by the provisions of subdivision (a) of Section 62 of the act was for the issuance of a license which the statute ordained should automatically expire two years after the date of issuance, we are impelled to the conclusion that the vicarious liability imposed by subdivision (b) of the aforesaid section ended when the license expired.”



Appellant states at page 11 of its brief:

*“If the word ‘minor’ is construed to exclude a married woman under the age of eighteen years, the interpretation leads to unnecessary technicalities.”*

Appellant has failed to state the nature of these unnecessary technicalities and respondents have been unable to determine what the appellant may have had in mind. It appears to respondents that it is fairly simple procedure to determine whether an individual is under eighteen years of age and, furthermore, to determine whether said individual is a minor. Therefore, if an individual is under *eighteen years of age* and furthermore *a minor*, then Section 57-4-12 is applicable. Respondents are heartily in agreement with the Utah case of *Taft v. Glade*, et al, ..... Utah....., 201 P. 2d 285, 287, which Appellant cites at page 7 of its brief, to-wit:

*“\* \* \* 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 unreasonable to require that a married adult woman secure the signature of a parent even in the event said adult married woman deposits proof of financial responsibility with the Tax Commission. This would be the result if Appellant's theory were followed in applying

Section 57-4-12 (c) UCA, 1943, which reads in part as follows:

“In the event a minor deposits . . . proof of financial responsibility . . . then the department may accept the application of such *minor* when signed by one parent or the guardian of such minor, \* \* \*

A married woman in this status is not under the *custody or control* of her parents and it would be unreasonable to conclude that she is under the *custody and control* of her husband.

### CONCLUSION

In conclusion respondents assert that appellant's hypothesis, which he would have the court legislate into the statute, is unreasonable and fails to give effect to the full statute. The statute (57-4-12 UCA 1943) expresses the intention of the legislature in plain and simple language, easily understood and there is no reason to complicate it. Jo Ann Wagstaff was an adult married woman at the date of the accident and not a *minor*, therefore, the provisions of 57-4-12 UCA 1943, are not applicable. Judgment for respondents should be affirmed.

Respectfully submitted,

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By Leland S. McCullough of counsel