

1986

Lisa Marakis v. State Farm Fire and Casualty Company : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Wayne B. Watson, P.C.; Beverley A. Ramsey for Watson, Seiler and Orehoski; Attorneys for Appellant.

Ray Phillips Ivie; Ivie and Young; Attorneys for Respondent.

Recommended Citation

Reply Brief, *Marakis v. State Farm Company*, No. 198620855.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/1405

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH SUPREME COURT
BRIEF

UTAH
DOCUMENT
KFU

45.9

.S9

DOCKET NO. **1986** 20855

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LISA MARAKIS,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	Case No. 20855
)	
Defendant-Respondent.)	

* * * * *

APPELLANT'S REPLY TO RESPONDENT'S BRIEF

* * * * *

APPEAL FROM A SUMMARY JUDGMENT OF THE DISTRICT COURT OF
THE SEVENTH JUDICIAL DISTRICT IN AND FOR CARBON
COUNTY, STATE OF UTAH
HONORABLE BOYD BUNNELL, JUDGE

* * * * *

WAYNE B. WATSON, P.C.
BEVERLEY A. RAMSEY, for
WATSON, SEILER & OREHOSKI
2696 N. University Ave., Suite 220
Provo, UT 84604

Attorneys for Plaintiff-Appellant

RAY PHILLIPS IVIE
IVIE & YOUNG
P.O. Box 672
Provo, UT 84603

Attorneys for Defendant-Respondent

FILED

APR 24 1986

Clk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LISA MARAKIS,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	Case No. 20855
)	
Defendant-Respondent.)	

* * * * *

APPELLANT'S REPLY TO RESPONDENT'S BRIEF

* * * * *

APPEAL FROM A SUMMARY JUDGMENT OF THE DISTRICT COURT OF
THE SEVENTH JUDICIAL DISTRICT IN AND FOR CARBON
COUNTY, STATE OF UTAH
HONORABLE BOYD BUNNELL, JUDGE

* * * * *

WAYNE B. WATSON, P.C.
BEVERLEY A. RAMSEY, for
WATSON, SEILER & OREHOSKI
2696 N. University Ave., Suite 220
Provo, UT 84604

Attorneys for Plaintiff-Appellant

RAY PHILLIPS IVIE
IVIE & YOUNG
P.O. Box 672
Provo, UT 84603

Attorneys for Defendant-Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LISA MARAKIS,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	Case No. 20855
)	
Defendant-Respondent.)	

* * * * *

APPELLANT'S REPLY TO RESPONDENT'S BRIEF

* * * * *

COMES NOW Appellant in the above-entitled matter and replies to Respondent's Brief pursuant to Rule 24(c) of the Utah Rules of Appellate Procedure

**NEW MATTERS SET FORTH
IN RESPONDENT'S BRIEF**

1. Defendant asserts that Plaintiff's appeal is now moot because "the 1986 legislature specifically addressed the physical contact rule" and "clarified their legislative intent. (Respondent's Brief, page 5)
2. Defendant asserts that the statutory language of Senate Bill 91 governs, to wit:

When a covered person claims an uninsured motor vehicle under subsection (2)(b) (an unidentified motor vehicle which left the scene of an accident proximately caused by its operator) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, then the covered person shall show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the covered person's testimony.

A correct reading of the record herein indicates that Senate Bill 91 cited by Defendant is not controlling in this case nor does it render this appeal moot for the following reasons:

I. ALL REFERENCES TO THE LANGUAGE OF ANY STATUTE NOT IN EFFECT ON THE DATE OF THE INJURY SHOULD BE STRICKEN FROM THE RECORD AND NOT CONSIDERED.

Lisa Marakis, the Plaintiff below, was injured on September 4, 1982. At the time of said injury, the uninsured motorist statute in Utah, which is analyzed thoroughly in Plaintiff's brief, did not require that a claim such as Plaintiff's be corroborated by evidence other than Plaintiff's testimony, nor did it require that physical contact be evidenced before an uninsured motorists claim could be paid.

The statute cited by Defendant as Senate Bill 91 is not now the law of this state and does not become such until July 1, 1986. Nor does the prospective statute cited by Defendant contain any clause which makes it retroactive or which purports that it is a "clarification" of any prior legislative intent. Indeed, the 1986 legislature is not vested with the power to determine

what the legislative intent of a prior legislature was or should have been.

Therefore, Defendant's reliance in April of 1986 upon a statute which will not become law for three more months is ill-founded, irrelevant and should be stricken from the record and excluded from consideration herein.

II. IN THE ALTERNATIVE, THE RECORD IN THIS CASE DOES NOT PRECLUDE PLAINTIFF FROM RECOVERY UNDER THE PROVISIONS OF SENATE BILL 91.

The focus of that portion of Senate Bill 91 upon which Defendant relies is not physical contact but the credibility of the insured. The new law, when it goes into effect, will require the insured to convince the court that there was, indeed, another car which caused the injury.

In the instant case, in its original Ruling on Motion for Summary Judgment dated April 30, 1985, the trial court wrote "Based upon the affidavit submitted by Plaintiff, the court finds that there is no disputed issue of material fact in this case." The court then ruled as a matter of law that "the provisions in Defendant's insurance policy requiring physical contact before the insurance claim is viable as to an uninsured motorist accident, is void and unenforceable and against public policy."

Defendant then moved to set the summary judgment aside. In doing so, it presented to the trial court no affidavits disputing the material facts presented in Plaintiff's affidavit.

Defendant's focus was on, rather, a legal argument that physical contact was required.

In reconsidering its original summary judgment in its ruling dated July 11, 1985, the trial court indicated on page 2 of its ruling that it relied on Plaintiff's answers to request for admissions, answer to interrogatories and memorandum, which included her affidavit. At no time did the trial court ever assert that it did not believe another vehicle was involved.

In its July 11, 1985 ruling the trial court, having thus found that the facts as asserted under oath by Plaintiff were undisputed, found that in all cases physical contact was required.

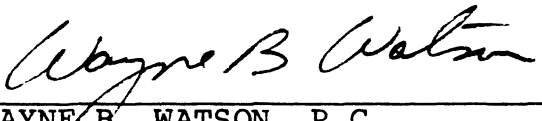
It is evident that the issue before the trial court was never whether Plaintiff's assertions were corroborated. Indeed, the trial court found that the facts asserted by Plaintiff were undisputed. That finding is not appealed from and must be relied upon by the appellate court in deciding this case.

The issue on appeal is whether the trial court erred in finding that physical contact was required in all cases, even in cases where the parties did not dispute the existence of a second vehicle.

Even if this court applies the criteria set forth in Senate Bill 91 to this case, the trial court erred. The law effective July 1, 1986, upon which Defendant relies, does not require physical contact in every case, as the ruling of the trial court herein would.

Under the state of the law at the present time and at the time the summary judgment was entered herein, Plaintiff had, to the trial court's satisfaction, met the burden of proof relative to the facts of the accident. Therefore Plaintiff is entitled to recover and the trial court erred in granting summary judgment to Defendant.

DATED this 15 day of April, 1986

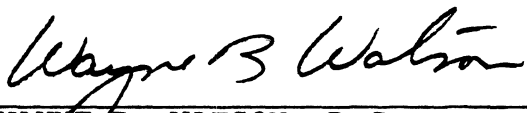


WAYNE B. WATSON, P.C.
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served four (4) copies by mail of the foregoing Appellant's Reply to Respondent's Brief to the following on the 15 day of April, 1986:

RAY PHILLIPS IVIE
IVIE & YOUNG
P.O. Box 672
Provo, UT 84603



WAYNE B. WATSON, P.C.
Attorney for Appellant