

1980

Carrieree and Steven Wilde v. Mid-Century
Insurance Company & Mid-Century Insurance
Company v. Nationwide Insurance Company :
Brief of Defendant-Respondent Mid-Century
Insurance Company

Utah Supreme Court

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ROBERT B. SYKES; Attorney for Plaintiff-AppellantsA. ALMA NELSON; Attorney for Third-Party Plaintiff-RespondentRAYMOND M. BERRY; Attorney for Third-Party Defendant-Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

CARRIELEE and STEVEN WILDE,)

Plaintiffs-Appellants,)

vs.)

MID-CENTURY INSURANCE COMPANY,)

Defendant-Respondent,)

.)

MID-CENTURY INSURANCE COMPANY,)

Third-Party
Plaintiff-Respondent,)

Case No. 16916

vs.)

NATIONWIDE INSURANCE COMPANY,)

Third-Party
Defendant-Respondent.)

BRIEF OF DEFENDANT-RESPONDENT MID-CENTURY INSURANCE COMPANY

APPEAL FROM THE THIRD JUDICIAL DISTRICT
COURT OF SALT LAKE COUNTY,
STATE OF UTAH

HONORABLE BRYANT H. CROFT, JUDGE

ROBERT B. SYKES
261 East 300 South
Suite 210
Salt Lake City, Utah 84111

Attorney for Plaintiffs-
Appellants

SNOW, CHRISTENSEN & MARTINEAU
RAYMOND M. BERRY
700 Continental Bank Bldg.
Salt Lake City, Utah 84101

Attorney for Third-Party
Defendant-Respondent
Nationwide Insurance Company

HANSON & NELSON
A. ALMA NELSON
520 Continental Bank Bldg.
Salt Lake City, Utah 84101

Attorneys for Defendant-
Respondent Mid-Century
Insurance Company

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ROBERT B. SYKES
261 East 300 South
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Attorney for Plaintiffs-
Appellants

SNOW, CHRISTENSEN & MARTINEAU
RAYMOND M. BERRY
700 Continental Bank Bldg.
Salt Lake City, Utah 84101

Attorney for Third-Party
Defendant-Respondent
Nationwide Insurance Company

HANSON & NELSON
A. ALMA NELSON
520 Continental Bank Bldg.
Salt Lake City, Utah 84101

Attorneys for Defendant-
Respondent Mid-Century
Insurance Company

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Third-Party
Plaintiff-Respondent,)

vs.)

NATIONWIDE INSURANCE COMPANY,)

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Defendant-Respondent.)

BRIEF OF DEFENDANT-RESPONDENT MID-CENTURY INSURANCE COMPANY

STATEMENT OF THE KIND OF CASE

This is an action by which plaintiff Carrielee Wilde is attempting to recover additional automobile no-fault insurance benefits from Mid-Century Insurance Company after recovering a judgment against the tortfeasor for all of her injuries.

DISPOSITION IN LOWER COURT

The District Court granted summary judgment in favor of Mid-Century Insurance Company, dismissing plaintiffs' action.

RELIEF SOUGHT ON APPEAL

Mid-Century Insurance Company seeks to affirm the Trial Court's dismissal of plaintiffs' action.

STATEMENT OF FACTS

The statement of facts included in the brief of plaintiffs-appellants cites irrelevant matters pertaining only to another lawsuit filed by plaintiff Carrielee Wilde and makes statements which have no support in the record without making any citation to the pages of the record supporting the statements. Therefore, Mid-Century Insurance Company considers it necessary to set forth the following Statement of Facts as established by the pleadings and records of the Trial Court.

On March 24, 1978, plaintiff Carrielee Wilde was involved in an automobile accident in which the vehicle she was driving was struck from the rear by a vehicle driven by one Verna Caffey (R. 2, 18). At the time of the accident Mrs. Wilde was covered with automobile no-fault insurance under a policy issued by Mid-Century Insurance Company (R. 2, 18), and Verna Caffey was covered with automobile liability insurance under a policy with the third-party defendant, Nationwide Insurance Company (R. 53-54, 62-64).

Plaintiff Carrielee Wilde claimed she sustained back injuries in the accident and she recovered no-fault insurance benefits from Mid-Century Insurance Company totaling \$3,587.98 (R. 24-26, 29, 87-88).

After receiving these benefits from Mid-Century Insurance Company, Mrs. Wilde brought a lawsuit against the tortfeasor, Verna Caffey, to recover all damages she sustained as a result of the accident. That lawsuit was entitled Carrielee Wilde v. Verna Caffey, Salt Lake County Civil No.

c78-4523, and was totally separate from the present lawsuit (R. 26, 29). The Wilde v. Caffey action was tried to a jury on June 4, 1979. The jury found the accident was caused solely by the negligence of Verna Caffey and found Carrielee Wilde sustained special and general damages totaling \$3,989.00 (R. 26, 27, 87-88).

The Trial Court in the Wilde v. Caffey lawsuit, Judge Dean E. Conder presiding, entered judgment on July 2, 1979, in favor of Carrielee Wilde and against Verna Caffey for the total damages determined by the jury, \$3,989.00 (R. 87-88). Judge Conder's judgment also provided that the amount to be recovered by Carrielee Wilde would be reduced by the no-fault insurance benefits received by Carrielee Wilde from Mid-Century Insurance Company, to avoid double recovery to the plaintiff (Id.).

Carrielee Wilde did not appeal the judgment entered by Judge Conder on July 2, 1979, and the time to appeal that judgment has expired (R. 25-26, 87-88).

After recovering the judgment against Verna Caffey, Carrielee Wilde filed the present action against Mid-Century Insurance Company on September 5, 1979, seeking additional no-fault insurance benefits as a result of the same accident in the amount of \$6,534.50, in spite of the fact that the jury in the Wide v. Caffey case had found the plaintiff did not sustain these damages (R. 2-3).

Mid-Century Insurance Company has filed a Third-Party Complaint against Nationwide Insurance Company, alleging that

in the event plaintiffs are permitted to recover any amounts from Mid-Century Insurance Company, Mid-Century Insurance Company is entitled to recover those amounts from Nationwide Insurance Company, pursuant to §31-41-11, Utah Code Annotated, 1953 (R. 53-54).

The plaintiffs' brief falsely states that this case involves the issue of whether Mid-Century Insurance Company was entitled to subrogate against the amounts Carrielee Wilde recovered in her lawsuit against Verna Caffey. This issue was decided in the Wilde v. Caffey case, from which Mrs. Wilde did not appeal. The only issue raised in this action is whether Carrielee Wilde is entitled to recover additional no-fault insurance benefits after she has recovered a judgment against the tortfeasor for the same injuries (R. 2-3, 8-9).

All parties filed motions for summary judgment (R. 21-22, 67-68, 81-82), and the motions were heard before Judge Bryant H. Croft (R. 83-84). The Court denied Carrielee Wilde's motion for summary judgment and granted the motion for summary judgment of Mid-Century Insurance Company. On January 16, 1980, the Court signed and entered a summary judgment dismissing plaintiffs' action against Mid-Century Insurance Company (R. 85-86). Plaintiff Carrielee Wilde has appealed from this summary judgment (R. 92).

ARGUMENT

Point I

MRS. WILDE IS NOT ENTITLED TO AD-
DITIONAL NO-FAULT INSURANCE BENEFITS

AFTER RECOVERING ALL OF HER DAMAGES
FROM THE TORTFEASOR.

Carriellee Wilde is attempting by this lawsuit to recover no-fault insurance benefits for damages she did not sustain as a result of the accident in question. The jury in the Wilde v. Caffey case specifically found that Mrs. Wilde's total special and general damages resulting from the accident were \$3,989.00, which amount was paid to Mrs. Wilde by the tortfeasor's insurance carrier. To allow Mrs. Wilde to recover additional amounts in no-fault insurance benefits from Mid-Century Insurance Company would be to require Mid-Century Insurance Company to pay Mrs. Wilde for damages she did not sustain and to allow double recovery to Mrs. Wilde, in violation of the expressed purpose and intent of the Utah No-Fault Insurance Act.

The purpose of the Utah No-Fault Insurance Act is stated at §31-41-2, Utah Code Annotated, 1953, as follows:

. . . The intention of the legislature is hereby to possibly stabilize, if not effectuate certain savings in, the rising costs of automobile accident insurance . . . (emphasis added).

It certainly cannot be contended that the purpose of the No-Fault Insurance Act to stabilize or provide savings in the cost of automobile insurance would be served by allowing an injured party who has recovered all of his damages from the tortfeasor to recover twice or recover damages he did not sustain by allowing him to recover for the same damages from his own no-fault insurance carrier.

The issues raised in this action were fully discussed and decided contrary to the plaintiffs' arguments in the case of Jones v. Transamerica Insurance Company, 592 P.2d 609 (Utah 1979). In Jones the Court held that where a person injured in an automobile accident has settled his claims against the tortfeasor the injured person is not entitled to any additional recovery of no-fault insurance benefits. The Court stated:

The whole tenor of the act is that an injured person will not be permitted to recover from an insurance carrier (over and above what the carrier has previously paid in benefits) once he has successfully recovered from his tortfeasor for personal injuries. Any other interpretation would be to permit double damage recovery.

In the present case the plaintiff did not merely enter into a settlement agreement with the tortfeasor, but obtained a final judgment against the tortfeasor which specifically determined the amount of damages the plaintiff sustained in the accident. The plaintiff has received payment of all of those damages and is now seeking to avoid the effect of that judgment by obtaining double recovery from Mid-Century Insurance Company and by recovering no-fault insurance benefits from Mid-Century Insurance Company for damages which were not sustained.

If the plaintiff in Jones, was not entitled to recover additional no-fault insurance benefits after making a settlement with the carrier for the tortfeasor it must follow

a fortiori that the plaintiff in the present case is not entitled to recover additional no-fault insurance benefits after recovering a judgment against the tortfeasor and receiving payment of that judgment from the tortfeasor's insurance carrier. In Jones, the plaintiff merely accepted a specific amount in settlement of a disputed claim against the tortfeasor and could argue that his damages were greater than the amount he received in settlement from the tortfeasor's insurance carrier. In the present case, however, by obtaining a judgment based on a jury's verdict against the tortfeasor Mrs. Wilde has not only released her claims against the tortfeasor, but has obtained a judicial declaration as to the specific amount of damages she sustained as a result of the accident. She has received payment for all of those damages and cannot be permitted to recover additional amounts in no-fault insurance benefits from Mid-Century Insurance Company.

The plaintiff argues that she should be permitted to recover additional no-fault insurance benefits from Mid-Century Insurance Company because the jury's verdict in her lawsuit against Verna Caffey was insufficient to cover her damages. If this were true her remedy would be to move for a new trial or appeal from the judgment in that case, which she elected not to do. The plaintiff should not be permitted to use an action against her no-fault insurance carrier as a substitute for such an appeal after the time to appeal has run.

The Trial Court therefore correctly ruled that the plaintiff is not entitled to recover any additional no-fault

insurance benefits from Mid-Century Insurance Company and the Trial Court properly dismissed the plaintiffs' action.

Point II

MID-CENTURY INSURANCE COMPANY'S RIGHT
TO RECOVERY FROM CARRIELEE WILDE'S
JUDGMENT AGAINST THE TORTFEASOR IS
NOT AN ISSUE IN THIS LAWSUIT AND
SHOULD NOT BE CONSIDERED.

Plaintiffs' appeal brief argues that Mid-Century Insurance Company was not entitled to recover any amounts from the proceeds of the plaintiffs' judgment against the tortfeasor. This issue was never raised in the lower court, was not decided in this lawsuit, and was decided in another lawsuit from which Carrielee Wilde never appealed.

The sole issue raised in the present case is whether Carrielee Wilde is entitled to recover additional no-fault insurance benefits from Mid-Century Insurance Company after she has recovered a judgment against the tortfeasor which has been paid. The plaintiffs raised no other issues before the Trial Court and certainly never raised a claim that Mid-Century Insurance Company is required to return to Carrielee Wilde the amounts Mid-Century Insurance Company recovered from Mrs. Wilde's judgment against Verna Caffey.

The Trial Court in Wilde v. Caffey recognized that Mrs. Wilde's judgment against Verna Caffey included amounts for which Mrs. Wilde had been reimbursed in no-fault insurance benefits by Mid-Century Insurance Company and the Trial

Court's judgment required that Nationwide Insurance Company, the insurance carrier for Verna Caffey, pay to Mid-Century Insurance Company the amount which Mid-Century Insurance Company has paid in no-fault benefits to the plaintiff. The judgment of the Court in Wilde v. Caffey was entered on July 2, 1979. Mrs. Wilde did not appeal from that judgment and the time to appeal has expired. Mrs. Wilde certainly cannot be permitted to use the present action as a substitute for an appeal of the Wilde v. Caffey case, particularly when the issues the plaintiff requests the Court to determine on appeal were never raised in the Trial Court. Point II of plaintiffs' brief therefore has no merit and should not be considered by this Court.

CONCLUSION

Plaintiff Carrielee Wilde is not entitled to recover any additional no-fault insurance benefits from Mid-Century Insurance Company, since she has obtained a judgment against the tortfeasor whose negligence caused the accident for all injuries she sustained in the accident, which judgment was fully paid. To allow her to recover any further sums would be to allow double recovery and payment of damages which the jury specifically found Mrs. Wilde did not sustain as a result of the accident in question. The Trial Court therefore properly granted summary judgment in favor of Mid-Century Insurance Company, dismissing plaintiffs' action. The arguments raised by plaintiff concerning Mid-Century Insurance Company's right to subrogate against the amounts recovered by Mrs. Wilde from

the insurance carrier for the tortfeasor were never raised as issues before the Trial Court and were decided in another lawsuit from which Carrielee Wilde did not appeal. Mid-Century Insurance Company therefore respectfully submits that the judgment of the Trial Court dismissing plaintiffs' action should be affirmed.

Respectfully submitted,

HANSON & NELSON



Attorneys for Defendant-Respondent,
Mid-Century Insurance Company
520 Continental Bank Building
Salt Lake City, Utah 84101

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of May, 1980, I mailed two (2) copies of the foregoing brief of Defendant-Respondent, Mid-Century Insurance Company to Robert B. Sykes, Attorney for Plaintiffs-Appellants, 261 East 300 South, Suite 210, Salt Lake City, Utah 84111, and two (2) copies to Raymond M. Berry, Attorney for Third-Party Defendant-Respondent, Nationwide Insurance Company, 700 Continental Bank Building, Salt Lake City, Utah 84101.



Attorney