

2000

Great West Casualty Company v. Utah Department of Transportation : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GREAT WEST CASUALTY)	
COMPANY,)	
)	Case No. 20000010-CA
Plaintiff/Appellant,)	
)	
UTAH DEPARTMENT OF)	Priority No. 15
TRANSPORTATION,)	
)	
Respondent/Appellee.)	

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FILED

Utah Court of Appeals

MAY 22 2000

Julia D'Alesandro
Clerk of the Court

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ARGUMENT

I. THE NOTICE OF CLAIM FILED BY LLOYD MORRIS WAS SUFFICIENT TO NOTIFY THE UTAH DEPARTMENT OF TRANSPORTATION.

The notice of claim submitted by Plaintiff Lloyd Morris was legally sufficient to notify the Utah Department of Transportation (“UDOT”) of Great West Casualty Company’s (“Great West”) claim.

In Moreno v. Bd. Of Educ. Of Jordan School Dist., 926 P.2d 886, 887 (Utah 1996) the guardians brought a wrongful death action on behalf of the guardians. The guardians in Moreno did not bring the action in a representative capacity of the natural mother. They did not name or even mention the natural mother. Id. The court in Moreno found that the guardians were not the real parties in interest and therefore not the proper plaintiffs. Id. at 892. The Moreno court held, however, that the notice of claim filed by the guardians was legally sufficient to notify the school district and preserve the wrongful death action for the natural mother. Id.

Likewise, in the case of bar, Plaintiff Lloyd Morris was not the real party in interest and nor was he the proper plaintiff. It is a well established tenet of principal/agency law that corporations act exclusively through their agents. Here, M&P transportation and later Great West asserting its subrogation claim acted through Plaintiff Lloyd Morris when he filed the notice of claim.

In sum, while the guardians in Moreno and Plaintiff Lloyd Morris in the present case could have filed a notice of claim on behalf of the real party in interest, neither did. Here, as in Moreno, the notice of claim filed by Plaintiff Lloyd Morris was legally sufficient to notify UDOT and preserve Great West's claim.

II. THE NOTICE OF CLAIM FILED BY LLOYD MORRIS DID NOT REQUIRE A STATUTORY RIGHT TO SUE ON ANOTHER'S BEHALF.

The notice of claim submitted by Plaintiff Lloyd Morris did not require a statutory right to sue on behalf of Great West.

UDOT contends that Moreno is inapplicable to the present case because the guardians in Moreno had a statutory right to bring suit on behalf of the natural mother. UDOT further contends that this is the key to the ruling in Moreno and that because there is no specific statute authorizing Plaintiff Lloyd Morris to sue on behalf of Great West, Plaintiff Lloyd Morris cannot file a notice of claim on behalf of Great West. UDOT's contention is misplaced.

The dispositive issue to be determined by this Court is not whether Plaintiff Lloyd Morris could sue on behalf of Great West, but simply whether Plaintiff Lloyd Morris could file a legally sufficient notice of claim on behalf of Great West and preserve Great West's property damage claim against UDOT.

The guardians in Moreno brought a wrongful death action on behalf of themselves. The Supreme Court found them to be the improper party plaintiff. Moreno 926 P.2d 892.

The Moreno court simply reasoned that because a guardian could bring a wrongful death action for his ward, so too could the guardian file the prerequisite notice of claim. Id. And, while the Court in Moreno notes that by statute, a guardian may maintain an action for the death of his ward, the holding in Moreno is not premised on any statute authorizing a guardian to maintain suit on behalf of the natural parent or real party in interest. See Id.

Moreno reasoned that the notice of claim by the guardians was sufficient to support the wrongful death action of the natural mother because the notice of claim was timely filed, it set out the facts and nature of the claim, and stated the damages incurred by the claimant. Id. Moreno further stated that the defendant school district could show no prejudice because the claim was filed by the guardians rather than by natural mother. Id.

In the present case, Plaintiff Lloyd Morris timely filed the notice of claim, set forth the facts and nature of claim, and stated the amounts of damages, including property damage to the semi-tractor. UDOT can show no prejudice by Plaintiff Lloyd Morris filing the notice of claim for property damage rather than Great West.

UDOT avers that there is no factual identity between Great West's and Plaintiff Lloyd Morris' claims and that both require "completely different evidence to sustain." UDOT's argument again fails.

Great West's claim for property damage and Plaintiff Lloyd Morris' claim for

personal injury arise from identical claims of negligence against UDOT and grow out of the identical facts and circumstances.

Because UDOT is contesting liability, a majority of the case against UDOT will go toward proving liability. The evidence required to prove the liability of UDOT is identical for both Great West's property damage claim and Plaintiffs Lloyd Morris and Judy Morris' personal injury claims. The only difference in the claims of Great West and Plaintiffs Lloyd Morris and Judy Morris goes to the aspect of damages, which are largely undisputed.

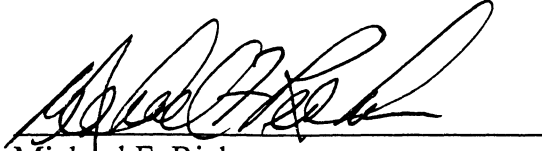
CONCLUSION

The notice of claim submitted by Plaintiff Lloyd Morris was legally sufficient to notify UDOT of Great West's claim for property damage. Plaintiff Lloyd Morris did not require statutory authority to sue on Great West's behalf in order to file a sufficient and adequate notice of claim on Great West's behalf. Great West and Plaintiff Lloyd Morris' claims of negligence against UDOT grow out of the identical facts and circumstances.

Based on the foregoing, Plaintiff and Appellant, Great West Casualty Company, respectfully requests that this Court reverse the ruling of the trial court granting UDOT summary judgment and remand this matter for further proceedings.

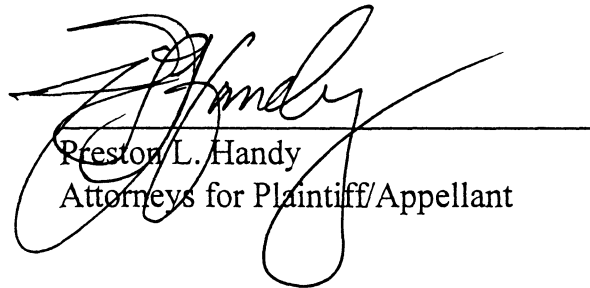
DATED this 22 day of May, 2000.

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A handwritten signature in black ink, appearing to read "Michael F. Richman", written over a horizontal line.

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