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Steven L. Malan v. James C. Lewis and Brett Lewis : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

NO. 17606

STEVEN L. MALAN,
Plaintiff-Appellant,

vs.

JAMES C. LEWIS and BRETT LEWIS,
Defendants and Respondents.

BRIEF FOR RESPONDENT

APPEAL FROM THE SECOND JUDICIAL DISTRICT
OF WEBER COUNTY

THE HONORABLE JOHN F. WALQUIST, JUDGE

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TABLE OF CONTENTS

NATURE OF THE CASE	1
DISPOSITION BELOW	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF THE FACTS	2
ARGUMENT	2
I. THE UTAH AUTOMOBILE GUEST STATUTE IS CONSTITUTIONAL	2
CONCLUSION	17

TABLE OF AUTHORITIES

CASES CITED

<u>Allen v. Rampton</u>	23 Utah 2d 336, 463 P.2d 7	4
<u>Behrens v. Burlee</u>	229 N.W. 2d 86 (So. Dak., 1975)	14, 15
<u>Branch v. Salt Lake County Service Area #2</u>	23 Utah 2d 181, 460 P.2d 814	4
<u>Brown v. Merlo</u>	106 Cal. Rptr. 388, 506 P.2d 212 . . .	3, 7, 10
<u>Cannon v. Oviatt</u>	520 P.2d 883 (Utah, 1974)	3, 9, 10, 16, 17
<u>Clarke v. Storchak</u>	384 Ill. 564, 52 N.E. 2d 229 (1944)	6
<u>Clarke v. Storchak</u>	332 U.S. 713, 64 S. Ct. 1270, 88 L. Ed. 1555 (1944)	7
<u>Critchley v. Vance</u>	575 P.2d 187 (Utah, 1978)	16, 17
<u>Schwalbe v. Jones</u>	128 Ca. Rptr. 321, 546 P.2d 1033 (1976) .	7, 8
<u>Silver v. Silver</u>	108 Conn. 371, 143 A. 240	13
<u>Silver v. Silver</u>	280 U.S. 118, 50 S. Ct. 57, 74 L. Ed. 221 (1929)	5, 6, 7
<u>State v. Acker</u>	26 Utah 2d 104, 485 P.2d 1038	4
<u>Thomas v. Union Pacific RR Company</u>	548 P.2d 621 (Utah, 1976)	16, 17
<u>Trade Commission v. Skaggs Drug Centers, Inc.</u>	21 Utah 2d 431, 436 P.2d 958	4

U.S. CONSTITUTIONAL PROVISIONS CITED

Fourteenth Amendment, Section 1	2, 11
---	-------

UTAH CONSTITUTIONAL PROVISIONS CITED

Article I, Section 2	3
Article I, Section 7	3
Article I, Section 11	3
Article I, Section 24	3

STATUTES CITED

Utah Code Ann. §41-2-1, et. seq.	13
Utah Code Ann. §41-2-22	13
Utah Code Ann. §41-9-1	2, 3
Utah Code Ann. §41-12-8	14

BRIEF FOR RESPONDENT

IN THE SUPREME COURT
OF THE STATE OF UTAH

NO. 17606

STEVEN L. MALAN,
Plaintiff-Appellant,

vs.

JAMES C. LEWIS and BRETT LEWIS,
Defendants and Respondents.

NATURE OF THE CASE

This is an action for damages for personal injuries arising out of an automobile accident wherein appellant was a guest.

DISPOSITION BELOW

Based upon a stipulation entered into by the parties, the District Court of Weber County determined that the defendant-respondent was entitled to a Summary Judgment against the plaintiffs of no cause of action on the plaintiff's Complaint.

RELIEF SOUGHT ON APPEAL

Defendant-respondent requests that the judgment of the District Court be affirmed.

STATEMENT OF THE FACTS

Respondent disagrees with the statement of facts set forth in appellant's brief to some extent. Particularly, respondent disagrees with appellant's statement relative to the fact that the appellant will have to wear a leg brace for the remainder of his life, or to the extent of his injuries claimed. These facts, however, are immaterial to the issues involved in this appeal. The appellant acknowledges that he was a guest in the respondent's vehicle and that the Guest Statute, if valid, would be dispositive of his claim. The only issue on appeal involves a constitutionality of Section 41-9-1, Utah Code Annotated, the Utah Automobile Guest Statute. (R.40-41).

ARGUMENT

I. THE UTAH AUTOMOBILE GUEST STATUTE IS CONSTITUTIONAL.

Even though the appellant has not designated his argument point by point, it would appear that the argument raised in the appellant's brief is that the Utah Automobile Guest Statute is unconstitutional in that it violates the Equal Protection Clause of the Fourteenth Amendment, Section 1, of the United States Constitution,

and also the Equal Protection Provision of the Utah State Constitution, Article I, Section 2, and that it further violates Article I, Section 7, and Article I, Section 11, as well as Article I, Section 24. Appellant does not, however, cite this court's decision of Cannon v. Oviatt, 520 P.2d 883 (1974) in which basically all of those same arguments were made by the appellants, and rejected by this court. Instead, the appellant has relied upon the decision of the California Supreme Court, Brown v. Merlo, 106 Cal Rptr. 388, 506 P.2d 212, to question the constitutionality of the Utah Guest Statute; Section 41-9-1, Utah Code Annotated. In Brown, the California Supreme Court held the California Guest Statute unconstitutional as being violative of the Equal Protection Clauses of the United States and the California Constitutions. The arguments advanced in appellant's brief are substantially the same as were adopted by the California Supreme Court. Those arguments were rejected by this court in the Cannon case, and have also been rejected by the Supreme Courts of the United States as well as numerous state Supreme Courts.

In approaching the ultimate issue to be decided, the court should bear in mind that all presumptions favor the constitutionality of any legislative enactment.

It has been stated many times by this court that a statute is presumed to be constitutional unless it clearly violates some specific provision of the constitution; that if any reasonable construction can be made to harmonize the statute with constitutional provisions, it will be so construed; that the party questioning a statute has the burden of proving its unconstitutionality; that a constitutional violation must be clear, complete and unmistakable; and that constitutionality of a statute transcends its destruction unless so obviously unreasonable as to have no basis for its existence. State v. Acker, 26 Utah 2d 104, 485 P.2d 1038; Allen v. Rampton, 23 Utah 2d 336, 463 P.2d 7; Branch v. Salt Lake County Service Area #2, 23 Utah 2d 181, 460 P.2d 814; Norton v. Department of Employment Security, 22 Utah 2d 24, 447 2d 907; Trade Commission v. Skaggs Drug Centers, Inc., 21 Utah 2d 431, 436 P.2d 958. Thus the question presented is not whether it is possible to condemn the Act, but whether it is possible to uphold it.

In interpreting the Constitution of the United States, this court cannot look to the State of California, but must look to the United States Supreme Court as its primary authority. It is interesting to note that the appellant makes no mention of the United States Supreme

Court cases in his brief. Yet that court has spoken on this very issue. The leading case is Silver v. Silver, 280 U.S. 118, 50 S.Ct. 57, 74 L.Ed. 221 (1929), wherein the constitutionality of the Connecticut Automobile Guest Statute was questioned. It was argued in that case that the statute created an unreasonable classification between automobile guests and other types of guests. In rejecting that argument, the United States Supreme Court held as follows:

"The use of the automobile as an instrument of transportation is particularly the subject of regulation. We cannot assume that there are no evils to be corrected or permissible social objects to be gained by the present statute. We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have been due to negligent operation.

. . . Whether there has been a serious increase in the evils of vexatious litigation in this class of cases, where the carriage is by automobile, is for legislative determination, and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of the court.

It is said that the vice in the statute is not that it distinguishes between the passengers who pay and those who do not, but between gratuitous pass-

engers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say a priori that the classification is one forbidden as without basis and arbitrary.

Granted that the liability to be imposed upon those who operate any kind of vehicle for the benefit of a mere guest or licensee is an appropriate subject of legislative restriction, there is no constitutional requirement that a regulation, in other respects permissible, must reach every class to which it might be applied--that the legislature must be held rigidly to the choice of regulating all or none. . . In this day of almost universal highway transportation by motorcar, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the legislature may regard as an evil, as to justify legislation aimed at it, even though some abuses may not be hit. . . It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs."

Thus, the Connecticut Guest Statute was upheld.

Many years after the Silver case decision, a constitutional challenge was made in the State of Illinois against the Illinois Guest Statute. The Illinois Supreme Court held the statute to be constitutional in the case of Clarke v. Storchak, 384 Ill. 564, 52 N.E. 2d 229 (1944). The decision was appealed to the United States

Supreme Court in Clarke v. Storchak, 332 U.S. 713, 64 S. Ct. 1270, 88 L.Ed. 1555 (1944). Again, the state court decision was affirmed. In a one sentence per curiam decision, the appeal was dismissed for want of a substantial federal question, citing Silver v. Silver as the controlling authority.

It is significant to note that since the Silver case, eleven states, including California, have recently held that Guest Statutes are not unconstitutional; Illinois, Texas, Iowa, Utah, Delaware, Oregon, Colorado, Nebraska, South Dakota, Alabama, and California.

Since the decision in Brown v. Merlo, 8 Cal. 3d 855, 106 Cal. Rptr. 388, 506 P.2d 212, the California Court sitting en banc in Schwalbe v. Jones, 128 Cal. Rptr. 321, 546 P.2d 1033 (1976), has held that a reenacted guest statute denying recovery to the owner-passenger of an automobile except in cases of intoxication or willful misconduct of the driver is not unconstitutional in denying equal protection of the law. In this case, the California Court held that in making a distinction between owner-passengers and non-owner-passengers the legislature may take into consideration the fact that the owner

generally has the right to direct and control the driver and as such there is a reasonable basis for the distinction.

As a practical matter, an owner sitting as a passenger probably can exercise no right of control in most accident situations. Accidents simply occur too quickly to allow an exercise of a right of control. In reality, it seems that the California Court has awakened to the idea that it could not substitute its wisdom for the wisdom of the legislature in determining whether a law is or is not desirable. The Schwalbe court said:

Plaintiffs, in order to sustain their position that Section 17158 denies them equal protection of the laws, must not be content to argue that the above reasoning was unwise, or that the purpose of the Legislature could have been better furthered by another means. Nor is it enough for them to show that the law-makers, in addressing similar problems in similar areas, have made dissimilar judgments. The burden cast upon them is that of demonstrating that the means chosen by the Legislature were irrational or that the purpose which they furthered was not a legitimate legislative concern. This they have not done. As the foregoing analysis indicates, the Legislature, pursuing the clearly legitimate goal of achieving a fair distribution of liability for damage caused by unreasonable conduct, concluded that the owner of a motor vehicle, whether he drives it himself or selects another to act as his chauffeur, should not recover for injuries sustained by him due to the negligent operation of

that vehicle--especially in light of the fact that in the case of the surrogate driver any such recovery would be at the expense of the driver. We may disagree with this conclusion, but we cannot brand it as beyond the pale of reason. To do so would be to seriously erode our constitutional function. We conclude therefore that the motion for nonsuit on the negligence count was properly granted.

Since an owner-passenger furnishes his car, there is an excellent argument that he gives compensation and is in fact a passenger for hire. Is it reasonable to do as California has done and say that owner-passengers cannot recover and that gratuitous guests can? Should a court substitute its wisdom for that of the legislature, as California has done, or should it not?

A number of law review articles, American Law Report Annotations, and cases from other states are cited in support of the appellant's proposition. However, the appellant fails to cite the Utah Supreme Court decision of Cannon v. Oviatt, 520 P.2d 883 (1974), in which the exact same constitutional arguments relied upon by the appellant were raised and fully argued in the consolidated cases decided under the Cannon decision.

This court framed the issues involved in the Cannon case in the first paragraph of its decision where the factual and legal circumstances were stated as follows:

"The appeals of the plaintiffs, which arose out of separate and unrelated actions, have been consolidated since they involve one common question of law, namely, was Section 41-9-11, U.C.A. 1953, unconstitutional? Each plaintiff, while a guest in a motor vehicle, moving upon a public highway in this state, sustained personal injuries in a vehicular accident. Each plaintiff initiated an action against his host, the driver of the vehicle, to recover damages for the negligent operation of the vehicle. Each host asserted Section 41-9-11, U.C.A. 1953, as a defense and denied liability. Each plaintiff urged unsuccessfully before the trial court that the Guest Statute, 41-9-11, U.C.A. 1953, denied him equal protection of the law under the Constitution of the United States (Fourteenth Amendment), and the Constitution of Utah (Article I Section 24)."

A reading of the appellant's brief, even though the arguments are not set out point by point, makes it abundantly clear that the gravamen of the plaintiff's attack on the Guest Statute is exactly the same as the gravamen of the attack of the Guest Statute in Cannon. The constitutional attack under both the United States Constitution and the Constitution of Utah is the same in this case as it was in the Cannon case.

This court, in rejecting the various arguments raised in the Brown case, and refusing to adopt the law of the Brown case, pointed out, in Cannon, that while the California court in the Brown case found as an

aspect of irrationality of the statutory classification that numerous statutory exceptions had rendered recovery under the Guest Statute largely fortuitous in view of the various circumstances in which the statute was not applicable, such a problem did not exist with regard to the Utah Statute. Furthermore, this court said, the Equal Protection Clause does not compel the State to either attack every aspect of the problem or to refrain from any action at all, but, instead, it is sufficient that the State's action be rationally based and free from invidious discrimination. The law of the case adopted in Cannon, which is still the law of the State of Utah, can be readily defined in two short paragraphs found on pages 888 and 889 of the decision, respectively, where it is stated:

"Section 49-9-11, U.C.A. 1953, was enacted to provide some protection to a generous host, who is sued by his invited guest for ordinary negligence, when the rider has given no compensation as an inducement for making the trip or furnishing the carriage for the rider. This act subserved a valid legislative purpose to encourage hospitality in the use of the public highways. Furthermore, the automobile guest in this jurisdiction is not placed in a distinct classification, where he alone as a recipient of generosity is deprived of the duty of due care by his host."

"The interpretation of the Guest Statute by this court has averted the alleged irrationality in the statutory classification which disturbed the court in Brown v. Merlo. Furthermore, the Equal Protection Clause does not compel the state to attack every aspect of a problem or to refrain from any action at all; it is sufficient that the State's action be rationally based and free from invidious discrimination."

Equal Protection, of course, requires that classifications be reasonable and not arbitrary, and have a fair and substantial relation to the object of the legislation. There must be a rational basis for the classification. The Utah Statute does not purport to single out any particular group or give any special treatment to anyone. It applies to all operators of motor vehicles and their guests. None are excluded. All persons who ride as guests in such vehicles are precluded from recovering from injury, death, or loss caused by the driver's ordinary negligence. All people who accept transportation in a motor vehicle as guests without payment are included.

Appellant has suggested that the purpose of the Guest Statute is to protect hospitality and to prevent collusive lawsuits. These objectives, although belittled by the appellant, have been considered proper by the

tribunal of our land as well as by numerous state Supreme Courts as previously cited, including the Supreme Court of the State of Utah. It must also be noted that the protection of hospitality is not limited to the automobile guest. This same principle has traditionally run through many fields of law; for example, the gratuitous bailee and the bailee for hire, the common carrier and private carrier, the inkeeper and the ordinary host, and the trespassor and the business invitee. The protection of hospitality has been ingrained into our legal system. As stated in the case of Silver v. Silver, 108 Conn. 371, 143 A. 240,

"There is inherent justice in the requirement that one who undertakes to perform a duty gratuitously should not be under the same measure of obligation as one who enters upon the same undertaking for pay."

Nor is it unusual for the legislature to pass special legislation applicable only to automobiles. The automobile itself provides a basis for classification. Examples of such legislation not applicable to other fields of tort law are laws that make the owner of a vehicle responsible for the negligence of minors (41-2-22, Utah Code Annotated); laws imposing requirements for driving automobiles (41-2-1, et seq. Operator's and

Chauffeur's Act); and special laws providing for the service of process upon non-resident motorists (41-12-8, Utah Code Annotated). Would appellant claim all such laws to be discriminatory because they relate only to automobiles? Automobile guests typically enter voluntarily and remain for relatively brief periods of time. The automobile statutes do not discriminate invidiously against any permanent, identifiable group of persons. They apply equally to all persons who are guests in automobiles. While it is believed that the foregoing authorities and argument have covered all aspects of the appellant's attack, the appellant has made the same argument under other unspecified sub-headings to the effect that the Guest Statute violates the Uniform Operation Provisions of the Utah State Constitution, and also violates the constitutional section providing that all courts shall be open and that every man shall have a remedy by due course of law for injury done to him in his property, person, or reputation. In addressing those arguments the Supreme Court of South Dakota in Behrens v. Burke, 229 N.W. 2d 86 (1975) states as follows:

"Nor does this statute violate the due process guarantee of Article IV, Section 2. That clause, we believe, is applicable to the facts before us only so far as it grants every person

the right to a hearing on his inclusion in the class affected by the statute. Article IV, Section 20, is inapplicable since "it is a guarantee that 'for such wrongs as are recognized by the law of the land the court shall be opened and afford a remedy.'" Simons v. Kidd, 1949, 73 S.D. 41, 38 N.W. 2d 883. The guest statute declares that injury suffered by a guest because of a host's negligence are not caused by 'wrongs as are recognized by the law of the land.'"

In essence, then, the court is saying that the constitutional provision guaranteeing that the courts will be open to every person for all injury done to him does not give a cause of action for negligence to a guest, but only such causes of action as other guests would have. The Guest Statute does not preclude a cause of action for injury to a guest. It merely changes the nature of proof required to support a cause of action. In Behrens, the court said a statute should not be declared unconstitutional unless the infringement on constitutional rights leaves no reasonable doubt. The court then said,

"* * * We believe the classification and the effect of the statute are reasonably geared to these purposes. We cannot believe that the Guest Statute can never act as an incentive to free transportation; we cannot believe that the Guest Statute does not prevent

recovery in lawsuits that could be characterized as ungrateful; nor do we believe we are entitled to question the wisdom of the substantive legislative decision that those who do not compensate their host drivers are not to receive the protection of the negligence standard. We hold the South Dakota Guest Statute does not violate Article IV, Section 18."

The same issues raised in the Cannon case have been before this court on two subsequent occasions in Thomas v. Union Pacific RR Company, (Utah) 548 P.2d 621 (1976), and Critchley v. Vance, (Utah) 575 P.2d 187 (1978). Not only did this court expressly reject the constitutional arguments raised by the appellants in this case, it has on those two subsequent occasions reaffirmed that position, and refused to change its ruling relative to the constitutionality of the Guest Statute. This court made it clear in the Thomas case and the Critchley case that the re-examination of the act should be left to the legislature. For the reasons stated in those cases, as well as others cited in this brief, it is respectfully submitted that if the Guest Statute is to be repealed that the act of repealing it must be left to the legislature of the State of Utah, and that this court should not retreat from the position heretofore announced in Cannon, Thomas, and Critchley.

CONCLUSION

The Guest Statute is not unconstitutional under the Constitution of the State of Utah or of the Constitution of the United States. The appellant's attack of the constitutionality of the Utah Guest Statute should not be considered in view of the recent consideration of this question by this court in Cannon v. Oviatt, supra, Thomas v. Union Pacific Railroad, supra, and Critchley v. Vance, supra.

DATED this 15th day of July, 1981.

Respectfully submitted,

By Wendell E. Bennett
WENDELL E. BENNETT
Attorney for Respondent

MAILING CERTIFICATE

I do hereby certify that I mailed two copies of the foregoing brief of respondent were mailed to Keith E. Murray, Bamberger Square, #13, 206 26th Street, Ogden, Utah, 84401, on this 15th day of July, 1981.

Wendell E. Bennett