

2009

Miguel Carranza and Amelia Sanchez v. United States : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

MIGUEL CARRANZA and
AMELIA SANCHEZ, natural
parents of Jesua M. V. Carranza-
Sanchez, deceased,

Plaintiffs/Appellants

v.

UNITED STATES and John and
Jane Does I-X,

Defendants/Appellees.

No. 20090409-SC
2007cv00291DAK

RESPONSE BRIEF OF THE UNITED STATES

ON CERTIFICATION FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
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ARGUMENT

I. Plaintiffs have failed to show that “minor child” is ambiguous.

Plaintiffs assert that the term “minor child” is ambiguous, without any analysis of the words. Plaintiffs rely only on the absence of a definition of the term in the wrongful death statute and the fact that the Utah Legislature did not explicitly exclude unborn children from the statute’s coverage. See Plaintiffs’ Opening Brief at 10-11. A statute’s terms are not rendered ambiguous merely because they are not defined, however. If that were true, the vast majority of statutory terms would be ambiguous.

Instead, as discussed in the United States’ Opening Brief, the Court looks to the “plain meaning” of statutory terms to determine whether they are ambiguous. See U.S. Op. Br. at 7. Terms are considered ambiguous only if they “may be understood to have two or more plausible meanings.” R & R Indus. Park, L.L.C. v. Utah Prop. and Cas. Ins. Guar. Ass’n, 2008 UT 80, ¶ 23, 199 P.3d 917 (citation and internal quotations omitted). Words are not ambiguous “simply because one party seeks to endow them with a different interpretation according to his or her own interests.” See Alf v. State Farm Fire and Cas. Co., 850 P.2d 1272, 1274-75 (Utah 1993) (footnote omitted) (interpreting terms of an insurance policy). If a statutory term is not ambiguous, the Court will not look beyond the plain language

to the legislative history or policy considerations. Vigos v. Mountainland Builders, Inc., 2000 UT 2, ¶ 13, 993 P.2d 207.

The analytical framework for interpreting statutory language is exemplified by State Farm Mut. Auto. Ins. Co. v. Clyde, 920 P.2d 1183 (Utah 1996). In Clyde, the plaintiffs' minor daughter was killed in a car accident. The plaintiffs' daughter was pregnant and unmarried at the time of her death, and the fetus did not survive the accident. After the plaintiffs settled with the other driver's insurer, they filed a claim with State Farm, their own insurer, under the underinsured-motorist provision of their policy. The plaintiffs sought recovery not only for the death of their daughter but also for the death of her unborn child.

State Farm filed suit seeking a declaratory judgment that the plaintiffs were not entitled to maintain an action for the wrongful death of their unborn grandchild. State Farm moved for summary judgment, arguing that the plaintiffs were neither "parents" nor "guardians" of their daughter's unborn child, as required by the wrongful death statute. Id. at 1185 (citing UTAH CODE ANN. § 78-11-6). The trial court granted State Farm's motion.

The plaintiffs appealed and argued that "because they provided [their daughter's], and therefore her unborn child's, sole means of support, they stood in loco parentis to the unborn child and should be treated as de facto parents or

guardians under section 78-11-6.” Id. This Court first noted that “the right of action to recover damages for death is not a common-law right, but is one created by statute, and hence the law creating the right can also prescribe the conditions of its enforcement.” Id. (citing Parmley v. Pleasant Valley Coal Co., 64 Utah 125, 228 P. 557, 560 (1924)). The Court then looked to the plain language of the wrongful death statute in order to give effect to the legislature’s intent.¹ Id. at 1186. The Court determined that the ordinary meaning of “parent” does not include a grandparent or other person standing in loco parentis. The Court further determined that the well-established legal meaning of “guardian” includes only one who has been validly appointed as a guardian. Based on the plain meaning of these terms, the Court concluded that the plaintiffs were neither parents nor guardians of their unborn grandchild and thus were not entitled to maintain a claim under Utah’s wrongful death statute. Id. at 1186-87.

Since the plaintiffs in Clyde lacked standing to pursue their claim, the Court declined to address “the more general question of whether the death of a fetus can ever provide the basis for maintaining an action under section 78-11-6.” Id. at

¹ The wrongful death statute did not define “parent” or “guardian,” nor did it explicitly exclude grandparents.

1187 n.4 (citing Webb v. Snow, 132 P.2d 114, 119 (Utah 1942) and Nelson v. Peterson, 542 P.2d 1075, 1079 (Utah 1975) (Maughan, J., dissenting)).

That issue is now squarely before the Court, and an analysis of the plain language of the wrongful death statute is determinative of the issue.

As discussed in the United States’ Opening Brief, “child” has more than one plausible meaning. See U.S. Op. Br. at 7-8. But the Legislature created a cause of action only for the death of a “minor” child, and the Legislature is presumed to have used the term “minor” advisedly.² Martinez v. Media-Paymaster Plus, 2007 UT 42, ¶ 46, 164 P.3d 384. A “minor” child is one who has achieved an age between birth and 18 years. See U.S. Op. Br. at 8-9. By definition, then, an unborn child cannot be a “minor child.” Since this term is not ambiguous, the Court need not look beyond the statutory language. The plain meaning of the wrongful death statute does not provide a cause of action for the wrongful death of an unborn child.

² Plaintiffs mistakenly assert that “minor child” was added to the wrongful death statute by a 2003 amendment. See Pls.’ Op. Br. at 14. In fact, the statute has used the term “minor child” since at least 1898. See U.S. Op. Br. at 6.

II. Even if “minor child” were ambiguous, the Utah Legislature’s explicit reference to “unborn” children or individuals in other statutes shows that the Legislature did not intend that the wrongful death statute provide a claim arising from the death of an unborn child.

Although this Court determined in Clyde that the plain language of the wrongful death statute was determinative, the Court also examined other evidence of the Utah Legislature’s intent. The Court noted that the Legislature had expressly included persons standing “in loco parentis” in several other statutes but did not do so in the wrongful death statute. 920 P.2d at 1187. The Court explained that this supported its interpretation of the statute: “[T]he legislature knew how to use the term ‘in loco parentis’ but chose not to do so in section 78-11-6 and therefore did not intend to allow persons standing in loco parentis to maintain an action for the wrongful death of a minor.” Id. (footnote omitted).

As discussed in the United States’ Opening Brief, the same reasoning applies in the present case. The Utah Legislature has enacted several statutes in which it expressly included “unborn” children or individuals in addition to “children” or “minor” children. See U.S. Op. Br. at 10-11. Thus, to paraphrase this Court’s reasoning in Clyde, the Legislature knows how to include the unborn in statutory language but chose not to do so in the wrongful death statute, and thus did not intend to provide a cause of action for the death of an unborn child.

Plaintiffs argue that because the Legislature included “unborn child” in the criminal homicide statute, “it would logically and morally follow” that the Legislature also intended to create civil liability for the death of an unborn child. See Pls.’ Op. Br. at 13-14. To the contrary, the Legislature’s choice of language leads to the opposite conclusion. The criminal homicide statute shows that the Legislature uses the word “unborn” when it intends to include unborn children in a statute’s coverage. Since the Legislature has not done so in the wrongful death statute, its intent could not be clearer.

And to the extent Plaintiffs argue that the inclusion of the unborn in the wrongful death statute is “morally” required, that is an argument for a legislative amendment, not judicial action. As this Court explained in Clyde, “While we sympathize with the [plaintiffs] for their loss, we cannot ignore the plain language of section 78-11-6. ‘The fact that the result in some circumstances may be to unreasonably restrict the class of persons who can bring a wrongful death action is an argument for amendment of the statute, not for our ignoring its words.’” 920 P.2d at 1187 (citation omitted).

The Legislature’s retention of the term “minor child” in the wrongful death statute is particularly noteworthy in light of this Court’s decisions rejecting claims for the wrongful deaths of unborn children. See U.S. Op. Br. at 11-14 (discussing

Webb v. Snow, 132 P.2d 114 (Utah 1942) and Nelson v. Peterson, 542 P.2d 1075 (Utah 1975)). Plaintiffs devote a substantial part of their opening brief to a discussion of whether Webb and Nelson represent binding precedent on this Court under the principle of stare decisis. See Pls.' Op. Br. at 14-18. This misses the point of the United States' citation of these cases. As discussed in the United States' Opening Brief, the fact that this Court issued two decisions rejecting claims for the wrongful deaths of unborn children provides additional evidence of the Legislature's intent. See U.S. Op. Br. at 11-14. Since legislative bodies are presumed to be aware of relevant judicial decisions, the Utah Legislature is presumed to have been aware of the Webb and Nelson decisions when it amended the wrongful death statute several times thereafter. If the Legislature had intended that the statute cover claims based on the wrongful deaths of unborn children, it had numerous opportunities to make its intent clear after this Court had rejected such claims. The fact that the Legislature did not do so further demonstrates its intent to limit claims to those arising from the deaths of children between birth and 18 years of age.

CONCLUSION

For the reasons set forth above and in the United States' Opening Brief, the United States requests that this Court answer the issue certified by the United States District Court as set forth in the United States' Opening Brief at 14.

DATED this 8th day of February, 2010.

CARLIE CHRISTENSEN
Acting United States Attorney

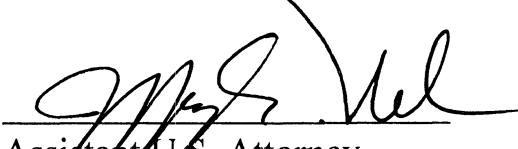

A handwritten signature in black ink, appearing to read "Jeff E. Nelson", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office and that two true and accurate copies of the foregoing **RESPONSE BRIEF OF THE UNITED STATES** were mailed, postage prepaid, this 8th day of February, 2010, to the following:

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