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

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

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

Plaintiffs/Appellants,

v.

UNITED STATES, et al.,

Defendant/Appellee.

Case No.: 20090409-SC

REPLY BRIEF OF APPELLANTS

CERTIFICATION OF QUESTION OF STATE LAW TO UTAH SUPREME COURT
BY THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH-CENTRAL
DIVISION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. The term “minor child” can reasonably be interpreted to include unborn children.	1
II. Utah caselaw does not exclude an unborn child from the definition of a “minor child” with respect to a wrongful death claim.	2
III. Because there is no controlling definition of a minor child in Utah Law and because the term may reasonably be defined in more than one way the court may properly consider relevant policy considerations in determining the intent of the legislature.	4
CONCLUSION	6

TABLE OF AUTHORITIES

STATUTES

Utah Code Ann. § 15-2-1 (2009 Repl.)	1
Utah Code Ann. §78-11-6	1, 5

CASES

<u>R&R Industrial Park, L.L.C. v. The Utah Property and Casualty Insurance Guaranty Assoc.</u> , 199 P.3d 917, 923 (Utah 2008)	4
<u>Alma Evans Trucking v. Roach</u> , 714 P.2d 1147 (Utah 1986)	2-4
<u>Alternative Options & Servs. for Children v. Chapman</u> , 106 P.3d 749 (UT App. 2004) .	2
<u>Moen v. Hansen</u> , 527 P.2d 266 (Wash. 1975)	5, 6

ARGUMENT

I. The term “minor child” can reasonably be interpreted to include unborn children.

Defendant cites to various dictionaries to help clarify the meaning of the term “minor child”, including Black’s Law Dictionary which defines “child” as “1. A person under the age of majority. . . 5. A baby or fetus.” 254 (8th ed. 2004). Similarly, Black’s Law Dictionary defines a “minor” as “A person who has not reached full legal age; a child or juvenile.” 1017. Therefore, using Black’s definitions of both “minor” and “child”, a “minor child” may be defined as a child who has not reached full legal age, which could include and unborn child where “child” is defined as a “baby or fetus.” Applying this logic to Utah Code Ann. § 15-2-1 (2009 Repl.) which states that the “period of minority extends in males and females to the age of eighteen years . . .” one reasonable conclusion is that any person that is not eighteen or older may be considered a minor child, including an unborn child.

Of course, while helpful, the above definitions, and those additional definitions cited by Defendant, are not controlling upon this Court in determining the intent of the Utah legislature with respect to Utah Code Ann. §78-11-6.

II. Utah caselaw does not exclude an unborn child from the definition of a “minor child” with respect to a wrongful death claim.

Defendant relies on two Utah cases to support its proposition that the definition of the term “minor child” cannot include an unborn child.

The first is Alternative Options & Servs. for Children v. Chapman, 106 P.3d 749 (UT App. 2004), a Utah Appellate Court decision, in which the court was asked to determine if unborn children come under the purview of the Interstate Compact on Placement of Children (ICPC). 106 P.3d 744 (Utah App.) The Court ruled that unborn children are not regulated by the ICPC. Id. at 752. This was a narrow decision limited to the ICPC and cannot properly be used to determine whether a wrongful death claim can arise from the death of an unborn child. Furthermore, the court’s holding in Chapman does not stand for the proposition that the definition of “child” in Utah Code Ann. § 62A-4a-701 could not include unborn children only that it “does not specifically include unborn children.” Id. at 752, n.8. Furthermore, the court in Chapman, in reaching its decision, applied a test of “parental . . . control” upon an unborn child as a basis for not extending ICPC regulation to the unborn. Id. Clearly, analysis of parental control is not applicable to the present case.

The second case is Alma Evans Trucking v. Roach, 714 P.2d 1147 (Utah 1986). In Roach, Isaac Robertson was killed in a trucking accident about three weeks before his child,

Heather, was born. Id. at 1148. The trucking company sought review of the Industrial Commission's decision to award death benefits to the unborn child from the time of her father's death as opposed to the time of her birth. Id. The court ruled that the relevant workers compensation statute provided for death benefits for a "posthumous child." Id. The court further ruled that "by its very definition a posthumous child is not a posthumous child until it is born." Id. The court held that workers compensation death benefits should be triggered by the birth of the child and not by the death of the child's father. Id. at 1149.

This case is distinguishable from present case in several ways. First, it is narrow in that it is limited to an analysis of workers compensation benefits. Second, the Court in Roach was interpreting a term, "posthumous child", that can only have one meaning. Specifically, as the court noted, the term "posthumous child" is, quite simply, a child that is born after his parent dies. Id. at 1148. There is no other competing definition for the term "posthumous child."

One of the purposes of workers compensation death benefits is to provide some support for the deceased's children. Therefore, it seems clear that a child would have to be alive to enjoy the intended workers compensation benefits resulting from his or her parent's death. As such, the court's ruling in Roach does not violate the Legislature's stated intention to provide protection to the rights of the unborn because a child can only benefit from

workers compensation awards if he or she is born alive.

On the other hand, the purpose of third party wrongful death actions is to discourage the negligent killing of others, hold accountable those individuals whose negligent acts lead to the deaths of others, and to provide relief to the families of individuals killed by the negligence of others. In the present case, the court must decide whether the death of unborn child could give rise to a cause of action by his statutory heirs as opposed to in Roach where the court had to decide whether an unborn child could be deemed a beneficiary of benefits triggered by the death of another. In the present case, the Plaintiff's deceased child, like any victim of a wrongful death, will never be the beneficiary of any claim.

For the foregoing reasons, neither the holding in Chapman or Roach is controlling on the issue now before the court.

III. Because there is no controlling definition of a minor child in Utah law and because the term may reasonably be defined in more than one way the court may properly consider relevant policy considerations in determining the intent of the legislature.

As previously set forth in Plaintiff's initial brief the Utah Supreme Court has held that "a statute is ambiguous 'if the terms used . . . may be understood to have two or more plausible meanings.'" R&R Industrial Park, L.L.C. v. The Utah Property and Casualty Insurance Guaranty Assoc. 199 P.3d 917, 923 (Utah 2008) (internal citations omitted). Once

a statute is deemed to be ambiguous the court may then “use extrinsic interpretive tools such as policy and legislative intent to guide [its] analysis.” Id.

Other courts have applied policy analysis when defining the term “minor child” to include the unborn. In Moen v. Hansen, 527 P.2d 266 (Wash. 1975), the Washington Supreme Court held that denial “ of recovery to an unborn child tortiously killed, on the arbitrary grounds that the child did not survive the tort long enough to be born alive, is eminently illogical.” 527 P.2d 266, 268 (1975). In reaching that conclusion the court:

[P]osed a hypothetical example involving twins injured simultaneously [where]one [was] born alive and one [was] stillborn. . . . [T]o allow recovery for only one of the twin victims is logically indefensible. It would be inconsistent to say that the child must first draw breath, then expire, in order to confer upon its parents a right of action for its death. We thus reject birth as the demarcation.

Id. (Internal quotations omitted)

In the present case, Plaintiffs have alleged that their child, at the fortieth week of gestation, died because he was post mature, meaning that the negligent act was one of failing to timely and safely procure his birth. In this case, the tortious act of allowing the child to remain in the womb too long should not logically and morally be available now as a defense for the act itself.

Therefore, given the ambiguous language of Utah Code Ann. §78-11-6 and the Utah Legislature’s stated commitment to protecting the unborn, this court should adopt the

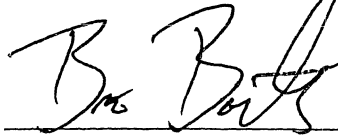
reasoning of Moen v. Hansen and interpret the term “minor child” to include the unborn.

CONCLUSION

For the reasons discussed above, Plaintiffs request that the Court answer the question of law certified by the United States District Court as follows: Utah’s wrongful death statute creates a cause of action for the wrongful death of an unborn child.

DATED this 3rd day of February, 2010.

FLICKINGER & SUTTERFIELD

A handwritten signature in black ink, appearing to read "B. Boulton", is written over a horizontal line.

Brett R. Boulton

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2010 the foregoing **REPLY BRIEF OF APPELLANT** was mailed for filing with the Utah Supreme Court at the address below, and that a true and correct copy of the foregoing was delivered via first class mail, postage prepaid, to each of the following additional parties:

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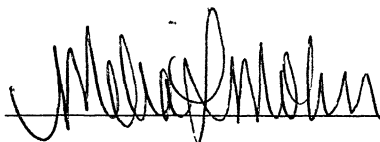
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