

1965

Christine E. Andrus v. Ida Allred : Respondent's Petition For Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

CHRISTINE E. ANDRUS,)	
)	
Plaintiff and Respondent)	
)	
-vs-)	Case No. 10282
)	
IDA ALLRED,)	
)	
Defendant and Appellant)	

RESPONDENT'S PETITION FOR REHEARING

Respondent, by and through her attorney, Craig T. Vincent of the law firm of Beaslin, Nygaard, Coke & Vincent, petitions the Honorable Court for a rehearing on the following grounds and allegations of error:

I

That the Court failed to observe legislative intent in construing the existence of the host-guest relationship.

II

That the Court failed to follow authoritative judicial precedent.

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IN THE SUPREME COURT OF THE STATE OF UTAH

CHRISTINE E. ANDRUS,)	
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Plaintiff and Respondent,)	
)	
- vs -)	CASE No. 10282
)	
IDA ALLRED,)	
)	
Defendant and Appellant)	

BRIEF IN SUPPORT OF PETITION FOR REHEARING

ARGUMENT

POINT I

THAT THE COURT FAILED TO OBSERVE LEGISLATIVE INTENT IN CONSTRUING THE EXISTENCE OF THE HOST-GUEST RELATIONSHIP.

The Utah Guest Statute reads in part:

"Any person who as a guest accepts a ride in any vehicle, moving upon any of the public highways of the State of Utah, and while so riding as such guest receives or sustains any injury, shall have no right of recovery against the driver. . . "

Section 41-9-1, Ut. Code Annot. 1953.

The conditions thus required by our Legislature are: That a guest (1) Accept a ride in any vehicle, (2) Moving upon any of the public highways, (3) Receive or sustain an injury, (4) While so riding as such guest. It is the stated intent of the Legislature that unless all four conditions are satisfied by the evidence, the plaintiff is not a guest, and is not precluded from her constitutional right of action.

The plaintiff here contends that the injury was not sustained by her "while so riding" in the defendant's automobile, and that she is not, therefore, barred from a right of recovery from the defendant because of the latter's negligence: The defendant's automobile had concluded its controlled movement, and had been parked for about five minutes; the driver was outside the car; the plaintiff was in the process of alighting therefrom; the ride was over; no further trip was contemplated. The ignoring, in the majority opinion, of these facts negating the requisite ingredient, constitutes an amendment to the Utah guest statute without benefit of legislative enactment, and the aforesaid fourth element is stricken from the law. This, it is respectfully submitted, is not the province of this Court.

POINT II

THAT THE COURT FAILED TO FOLLOW AUTHORITATIVE JUDICIAL PRECEDENT

The majority of the Court refused to follow the case of Prager v. Israel, 15 Cal. 2nd 89, 98 P2d 729, on three announced grounds: (1) That the California Court construed its guest statute (which is exactly identical to the Utah guest statute) strictly, being in derogation of the common law, (2) That that case was not decided until five years after the enactment of the Utah guest statute, and (3) That the cases are distinguishable on their facts.

As pointed out in the Respondent's brief, this Court is called upon to construe a statute in derogation of the Constitution. Section 68-3-2, UCA, 1953, cited by the Court carries no mandate requiring the Court to carefully limit the scope of those enactments abrogating constitutional rights, and is therefore here inapplicable.

Art. I § 11, Constitution of Utah provides:

"All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay . . . "

The Utah guest statute not only restricts an express constitutional right, but it is repugnant to the stated intent of this State's founding fathers.

It is suggested that a constitutional guaranty is not subject to modification by doubtful implication, and a statute purporting to alter such a relationship must be carefully and narrowly applied and strictly limited to its stated and obvious purpose.

Secondly, the plaintiff contends that the circumstances of timing is not of any great impact here. Rather, the fact that where the high court of a sister state has interpreted a statute identical to that adopted by our Legislature, that interpretation should be seriously considered and, unless some faulty departure is discovered, followed.

The final point made in the attempt to distinguish the cited case from the instant matter, is that the interruption in the journey was more than an hour and the parties had moved to the back seat. The guest statute gives no indication whatsoever that the Legislature intended the relationship to be sustained or denied upon any such basis. As a matter of fact, the California Court makes it quite obvious how they would decide the instant matter if it were before them:

"(It) would be . . . illogical to say that a car which had been parked for several hours in a widened space in a public highway provided for that purpose, and which thereafter moved a few inches due to defective brakes or their lack of application -- without a driver behind the steering wheel and without the motor having been started -- is 'moving on' a public highway within the meaning of the statute.

"We are likewise of the opinion that a person alighting from an automobile, who is in a position with one foot on the ground and the other on the running board when it so moves cannot be said to be 'riding' in said automobile within the meaning of said statute.

"It is obvious that in order to bring the plaintiff within the guest statute, it would be necessary to so construe said statute as to omit therefrom the words 'moving upon' and 'while so riding'." Prager v. Israel, p. 732.

Actually, the only factual distinction of merit is that in the cited case the parties yet contemplated further journey, while here the trip was concluded and the plaintiff was no longer the invited guest of the defendant for the purpose of traveling on the public highways within the meaning of the guest statute.

It is advanced that there is no favorable basis for refusing to adopt the holding of the Prager case.

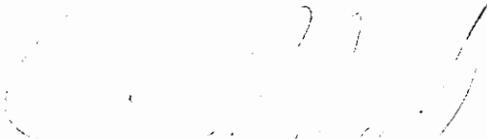
CONCLUSION

The plaintiff respectfully submits that the lower

Court's decision should be affirmed upon the basis of legislative intent and judicial precedent.

Respectfully Submitted,

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