

1983

**Tamara "Tammy" Sorenson v. Steve M. Aller, James J. Hill, And  
Fred A. Moreton & Company, A Utah Corporation v. Pam A.  
Mcconaghy : Respondents Brief**

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IN THE SUPREME COURT OF THE STATE OF UTAH

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PAMARA "TAMMY" SORENSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STEVE M. ALLER, JAMES J. HILL, )  
 and FRED A. MORETON & COMPANY, )  
 a Utah corporation, )  
 )  
 Defendants, Third-Party )  
 Plaintiffs and ) No. 19029  
 Respondents, )  
 )  
 vs. )  
 )  
 PAM A. McCONAGHY, )  
 )  
 Third-Party Defendant )  
 and Appellant. )  
 )

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RESPONDENTS' BRIEF

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Appeal from a Judgment of the District Court  
of Salt Lake County, State of Utah  
Honorable J. Dennis Frederick

---

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IN THE SUPREME COURT OF THE STATE OF UTAH

TAMARA "TAMMY" SORENSON,	)	
	)	
Plaintiff,	)	
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vs.	)	
	)	
STEVE M. ALLER, JAMES J. HILL,	)	
and FRED A. MORETON & COMPANY,	)	
a Utah corporation,	)	
	)	
Defendants, Third-Party	)	
Plaintiffs and Respondents,	)	No. 19029
	)	
vs.	)	
	)	
PAM A. McCONAGHY,	)	
	)	
Third-Party Defendant	)	
and Appellant.	)	
	)	

RESPONDENTS' BRIEF

STATEMENT OF NATURE OF CASE

The issue before the court is whether the Utah Guest Statute bars a tort-feasor's contribution action against a host driver whose guest passenger was injured as a result of the concurring negligence of the tort-feasor and the host driver.

DISPOSITION IN LOWER COURT

The trial court entered judgment for contribution in favor of tort-feasor respondents Hill and Moreton and against third-party defendant host driver McConaghy.

RELIEF SOUGHT ON APPEAL

Respondents seek affirmance of the lower court judgment for contribution.

STATEMENT OF FACTS

Respondents agree with appellant's statement of facts, except the respondents submit that there was an issue as to whether ice caused appellant McConaghy's vehicle to go out of control.

ARGUMENT

POINT I.

THE GUEST STATUTE DOES NOT EXPRESSLY PROHIBIT THE MAINTENANCE OF A CONTRIBUTION ACTION, AND THE EQUITIES DEMAND CONTRIBUTION IN THE CASE AT BAR.

Examination of the Guest Statute, Section 41-9-1, Utah Code Annotated (1953), in procedural or substantive terms is a semantic exercise that can only produce conflicting, unclear, and unsatisfactory decisions. The better approach is to simply look at the underlying policies barring the original action and determine whether these policies would be violated by third-parties seeking contribution. If it is clear that the policies would not be harmed by the third-party action, contribution should be allowed. Policy grounds behind the Utah Guest Statute do

not apply to third-party actions for contribution, and the lower court's decision should be upheld.

This court has previously addressed contribution issues in the contexts of workmen's compensation and intra-family immunity, denying contribution in the former and allowing it in the latter.

This court has consistently held that a party cannot seek contribution from the plaintiff's employer covered by the Utah Workmen's Compensation Act, Sections 35-1-1 et seq., Utah Code Ann. (1953). (Curtis v. Harmon Electronic, Inc., 552 P.2d 117 (Utah 1976) and Phillips v. Union Pacific Railroad Company, 614 P.2d 153 (Utah 1980)). In denying contribution in these cases, this court recognized that tort law and workmen's compensation are founded on differing social policies. Whereas tort law generally premises liability upon fault, the workmen's compensation statute bases liability solely upon the occurrence of an employment-related injury. The imposition of strict liability upon the employer assures the economic security of the employee, who would otherwise face the delay, expense, and risk inherent in attempting to prove the employer's negligence. (Buhler v. Gossner, 530 P.2d 803 (Utah 1975) and State Tax Commission v. Department of Finance, 576 P.2d 1297 (Utah

1978)). Since the employer is strictly liable under the statute, the legislature has immunized the employer from liability in tort, including contribution. Were it otherwise, the employer would be subjected to the inequity of having to pay twice for the employee's injury.

In contrast to the workmen's compensation cases, this court upheld contribution in Bishop v. Nielsen, 632 p.2d 864 (Utah 1981), where the third-party defendant claimed immunity under the intra-family immunity doctrine. In Bishop, this court defined a "joint tort-feasor" to be any party who is culpable for an injury whether or not the injured person can maintain an action for damages against that party. The court emphasized that contribution is an equitable remedy between joint tort-feasors and that the equities in permitting contribution outweighed the possible disruption of domestic harmony, the policy supporting the claimed immunity.

The difference in result between the workmen's compensation cases and Bishop is explained by the impact that contribution would have had on the policies justifying the immunities claimed. Whereas allowing contribution in the workmen's compensation cases would have disrupted the legislative program defining employer liability and led to



iniquitable results, the same was not true in Bishop where contribution had no significant impact on the social policy supporting intra-family immunity and met the demands of equity.

Allowing contribution in the case at bar will not violate the express terms of the Guest Statute or frustrate the policies supporting the statute. The Guest Statute, generally, bars any action or recovery by the passenger against his host. By permitting contribution, this court will not defeat that bar, but will still uphold the right of the host to not be sued by or pay anything to his passenger.

The immunity claimed by the appellant here is similar to intra-family immunity. Like intra-family immunity, the Guest Statute prohibits a party from bringing a direct action against another party due to a social relationship between the parties which the law desires to foster. Unlike the workmen's compensation statute the Guest Statute does not create a new liability for the host and has no language indicating that the host's protection is absolute. The Guest Statute should not be used as a shield in this third-party action to frustrate the equities recognized by the court in Bishop.

The concept of contribution is based upon the equitable principle that where two or more parties contribute to an injury they should share the liability and cost of their negligence in proportion to their fault. As set forth by the lower court in this case:

It would be inequitable to require a tort-feasor to bear the entire cost of an injury he may have only partially caused, or to pay more than his share based on the degree of fault. The purpose of the contribution act is to relieve this inequity. Memorandum decision, Honorable David B. Dee, March 29, 1982.

The respondents have already paid the plaintiff 100 percent of her damages by virtue of Section 78-27-41(1), Utah Code Ann. (1953) which provides:

Nothing in this act shall affect: (1) The common-law liability of the several joint-tortfeasors to have judgment recovered, and payment made, from them individually by the injured person for the whole injury. However, the recovery of a judgment by the injured person against one joint-tortfeasor does not discharge the other joint-tortfeasors.

The plaintiff, therefore, has no interest whatsoever in this contribution action, and it is vacuous for the appellant to assert that the plaintiff should not be allowed to do indirectly that which she is not permitted to do directly. Obviously, the respondents, who have paid the entire judgment, are the only interested parties and, by this

contribution action, are merely attempting to assert their equitable rights to prevent a windfall to the appellant whose culpability represents 60 percent of plaintiff's damages.

Allowing contribution will not prejudice the policy supporting the Guest Statute. This court has stated that the Guest Statute encourages hospitality between the host driver and non-paying guest, thereby reducing traffic and promoting fuel conservation. (Cannon v. Oviatt, 520 P.2d 883 (Utah 1974) and Critchley v. Vance, 575 P.2d 187 (Utah 1978)). Surely the social policy supporting the Guest Statute is less significant than the social policy involved in Bishop. The relationship between a parent and child is much closer than between a driver and guest. In the former relationship the parties live in close proximity, see each other daily, and are more intimate. Yet this court in Bishop held that the relationship between these family members would not be upset by the third-party contribution action. This same rationale should, therefore, apply with greater force to the occasional driver-guest association. Since this court has concluded that the family would not suffer disharmony as a result of the third-party suit, it is difficult to discern how a greater protection should be

afforded to maintaining the hospitality between a host and guest during a brief ride.

CONCLUSION

The court should permit contribution in this action. The Guest Statute does not expressly prohibit contribution actions, and upholding the equitable right to contribution will prevent a windfall to the appellant.

Respectfully submitted this 19 day of July, 1983.

CHRISTENSEN, JENSEN & POWELL

By \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of July, 1983, two true and correct copies of the foregoing RESPONDENTS' BRIEF were mailed, postage prepaid, to:

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