

2004

Gerald Vaughn v. Darin Anderson : Brief of Appellant

Utah Court of Appeals

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Kristin A. VanOrman; Strong & Hanni; attorney for appellee.

Matthew H. Raty; attorney for appellant.

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Defendant/Appellee.

Appellate Case No. 20040651-CA
Civil No. 010908321

Matthew H. Raty (#6635)
LAW OFFICE OF MATTHEW H. RATY, PC
First National Bank Bldg.
480 East 400 South, Suite 200
Salt Lake City, Utah 84111
Telephone (801) 521-0190
Facsimile (801) 521-0177
Attorney for Plaintiff/Appellant

Appellant requests oral argument and a published opinion.

FILED
UTAH APPELLATE COURTS
FEB 17 2005

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)	
GERALD VAUGHN,)	APPELLANT’S BRIEF
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	Appellate Case No. 20040651-CA
DARIN ANDERSON,)	Civil No. 010908321
)	
Defendant/Appellee.)	
)	
)	

Matthew H. Raty (#6635)
LAW OFFICE OF MATTHEW H. RATY, PC
First National Bank Bldg.
480 East 400 South, Suite 200
Salt Lake City, Utah 84111
Telephone (801) 521-0190
Facsimile (801) 521-0177
Attorney for Plaintiff/Appellant

Appellant requests oral argument and a published opinion.

TABLE OF CONTENTS

TABLE OF CONTENTS	-ii-
TABLE OF AUTHORITIES	-iii-
JURISDICTION OF THIS COURT	1
STATEMENT OF ISSUE PRESENTED ON APPEAL	1
APPLICABLE STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	6
POINT I	6
POINT II	7
POINT III	8
ARGUMENTS	9
POINT I - THE PLAIN LANGUAGE OF THE NO-FAULT STATUTORY SCHEME DOES NOT CREATE A NEW BURDEN OF PROOF AT TRIAL, BUT PROVIDES A PRE- ADJUDICATIVE SCREENING PROCESS.	9
POINT II - PLAINTIFF PREVAILED ON ALL REQUIRED ELEMENTS AT TRIAL AND SHOULD HAVE BEEN AWARDED DAMAGES.	14
POINT III - INTERPRETING U.C.A. § 31A-22-309(1)(a) TO CREATE A NEW BURDEN OF PROOF DEFEATS ITS OSTENSIBLE PURPOSE AND IS AN ENORMOUS WASTE OF JUDICIAL AND LITIGANT RESOURCES.	16
CONCLUSION	17
ADDENDUM	18

TABLE OF AUTHORITIES

Statutes

Utah Code Ann. § 31A-22-307	2
Utah Code Ann. § 31A-22-307(1)(a)	11
Utah Code Ann. § 31A-22-307(2)(e)	7, 11, 12, 13
Utah Code Ann. §§ 31A-22-306 through 309	12, 16
Utah Code Ann. § 31A-22-309(1)(a)	4, 6, 7, 8, 10, 11, 12, 13, 15, 17

Cases

<i>Allstate Insurance Co. v. Ivie</i> , 606 P.2d 1197, 1200-01 (Utah 1980)	11
<i>Bear River Mut. Ins. Co. v. Wall</i> , 937 P.2d 1282, 1285 (Utah App. 1997)	9
<i>Berrett v. Purser & Edwards</i> , 876 P.2d, 367, 370 (Utah 1994)	12
<i>Creswell v. Medical W. Community Health Plan</i> , 419 Mass 327, 644 N.E.2d 970 (1995)	9
<i>Dairyland Ins. Co. v. Starkey</i> , 535 N.W.2d 363 (Minn 1995)	9
<i>CT v. Johnson</i> , 1999 UT 35, 977 P.2d 479 (Utah 1999)	11
<i>George v. Welch</i> , 997 P.2d 1248, 1251 (Colo. Ap. 1999)	9
<i>Horrell v. Utah Farm Bur. Ins. Co.</i> , 909 P.2d 1279, 1280 (Ct. App. 1996)	1
<i>Montgomery v. Daniels</i> , 38 N.Y.2d 41, 50-51; 378 N.Y.S.2d 1, 8-9; 340 N.E.2d 444 (1975)	9
<i>Nelson v. Salt Lake County</i> , 905 P.2d 872, 875 (Utah 1995)	12
<i>Parks v. Utah Transit Auth.</i> , 2002 UT 55, ¶4, 53 P.3d 473	1
<i>Schmidt v. Clothier</i> , 338 N.W.2d 256, 260 (Minn. 1983)	10

<i>Stephens v. Bonneville Travel, Inc.</i> , 935 P.2d 518, 520 (Utah 1997)	12
<i>Warren v. Melville</i> , 937 P.2d 556, 562 (Utah App. 1997)	9

Other Authorities

12A Mark S. Rhodes, Couch on Insurance 2d § 45:667, at 271 (rev. ed. 1981)	9
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JURISDICTION OF THIS COURT

Plaintiff/Appellant filed his Notice of Appeal on July 29, 2004. The Utah Court of Appeals has jurisdiction over this appeal pursuant to § 78-2-2(3)(j) and 4, Utah Code.

STATEMENT OF ISSUE PRESENTED ON APPEAL

Did the trial court misinterpret U.C.A. § 31A-22-309(1)(a) to require that the jury be prohibited from awarding damages to plaintiff until it first made a special finding that plaintiff's automobile-accident-related medical expenses exceeded \$3,000, when the no-fault statutory scheme does not create a burden of proof at trial, but instead requires that any dispute over the amount of a plaintiff's medical bills be raised by the defendant and resolved before a plaintiff is allowed to maintain a cause of action for general damages at trial?

The court of appeals reviews a trial court's interpretation of a statute on a correctness standard, granting no deference to the trial court: "The interpretation of a statute . . . presents a question of law, which this court reviews for correctness." *Parks v. Utah Transit Auth.*, 2002 UT 55, ¶ 4, 53 P.3d 473. Also, where, as here, a motion for judgment notwithstanding the verdict or new trial is based on the interpretation of law, an appellate court reviews the trial court's ruling for correctness. *Horrell v. Utah Farm Bur. Ins. Co.*, 909 P.2d 1279, 1280 (Ct. App. 1996). The issue was preserved in the trial court as evidenced in R. 268 (2:6-7, 6:6-7), R. 214-15.

APPLICABLE STATUTORY PROVISIONS

The following State of Utah statutory provisions are relevant to the disposition of this appeal:

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) (a) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (i) death;
- (ii) dismemberment;
- (iii) permanent disability or permanent impairment based upon objective findings;
- (iv) permanent disfigurement; or
- (v) medical expenses to a person in excess of \$3,000.

31A-22-307. Personal injury protection coverages and benefits.

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation, including prosthetic devices, ambulance, hospital, and nursing services, not to exceed the total minimum required coverage of \$3,000 per person;

...

(e) (i) In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses.

STATEMENT OF THE CASE

Plaintiff was injured from a rear-end automobile collision and brought suit to recover his damages. The case was tried to a jury on February 4, 5, and 6, 2004. At the close of defendant's evidence, plaintiff moved for directed verdict, asserting that the only

valid issue for the jury was the amount of damages to award plaintiff. The court denied plaintiff's motion. At the close of trial on February 6, 2004, the court submitted a special verdict form to the jury which, contrary to the court's order of February 2, 2004, asked the jury to determine, by a preponderance of the evidence, whether plaintiff had incurred accident-related medical bills in excess of \$3,000 and, if not, prohibited the jury from awarding any damages to plaintiff.

The jury found that defendant's negligence had caused injury to plaintiff, but found that plaintiff's medical bills did not exceed \$3000 and, following the court's direction, awarded no damages to plaintiff. The court then entered judgment for defendant.

On March 12, 2004, plaintiff moved for judgment notwithstanding the verdict, or in the alternative, a new trial on damages, arguing that it was legal error to submit a threshold question to the jury. The court denied plaintiff's motion and plaintiff filed a Notice of Appeal.

STATEMENT OF FACTS

1. Plaintiff was injured on September 25, 1997, when the vehicle he was driving was rear-ended by a vehicle driven by defendant. R. 1, 6.

2. Prior to filing suit, State Farm Insurance Company, which was plaintiff's no-fault insurer as well as defendant's liability insurer, evaluated and paid over \$3,500 in medical bills as related to the collision. R. 214, 226-229.

3. At no time before the start of trial did defendant move to contest the amount of plaintiff's medical bills or to dispute that plaintiff had satisfied the requirements of U.C.A. § 31A-22-309(1)(a) to maintain a claim for general damages.

4. On February 2, 2004, the court entered "Order on Defendant's Liability," ordering as follows:

The court shall enter a finding and the jury shall be instructed that Defendant was negligent and that Defendant's negligence proximately caused the collision.

The issues presented to the jury for decision will be limited to proximate causation of Plaintiff's injuries and to the amount of Plaintiff's damages.

R. 83-84.

5. The case was tried to a jury on February 4, 5, and 6. R. 162-166.

6. On the first day of trial, the court indicated that despite defendant's failure to contest plaintiff's medical bills before trial, it would allow defendant to assert that plaintiff had not met a \$3,000 medical expense threshold, and also that it would instruct the jury that it could not award damages to plaintiff unless it first determined by a preponderance of evidence that plaintiff had incurred more than \$3,000 in medical expenses from the accident. R. 214.

7. The court instructed plaintiff that he would not be allowed to introduce evidence at trial that defendant's own liability carrier, State Farm Insurance Company, had paid over \$3,500 in plaintiff's medical bills from the accident, nor would plaintiff be allowed

to demonstrate to the jury that State Farm had performed an evaluation wherein it approved certain of plaintiff's medical bills as related to the accident and denied payment for other bills as not related to the accident. R. 214-215. The court stated the probative value of such evidence was outweighed by unfair prejudice to defendant. R. 215.

8. During trial, defendant targeted certain of plaintiff's medical bills and adduced evidence through his experts that, in their opinion, certain treatments and billing amounts were not related to the automobile collision, and that plaintiff's accident-related medical bills did not exceed \$3,000. R. 215.

9. Plaintiff adduced evidence at trial that his accident-related medical bills did exceed \$3,000; however, the court would not allow plaintiff to adduce evidence that defendant's liability carrier had acknowledged that plaintiff had incurred accident-related medical bills in excess of \$3,000. R. 213, 224.

10. At the close of defendant's evidence at trial, plaintiff moved for directed verdict, asserting that the only valid issue for the jury was the amount of damages awardable to plaintiff. R. 215.

11. The court denied plaintiff's motion for directed verdict and submitted to the jury the issues of (1) causation, (2) whether plaintiff had incurred \$3,000 in accident-related medical bills, and, if so, (3) the amount of plaintiff's damages. R. 215, 167-169.

12. The jury found that defendant's negligence had caused injury to plaintiff, but did not find from a preponderance of the evidence, that plaintiff's related medical expenses exceeded \$3,000. R. 167-168.

13. Based on the jury's finding of less than \$3,000 in accident-related medical bills, the jury was instructed to make no further findings and to award nothing to plaintiff. R. 168-169.

14. The court entered judgment on behalf of defendant finding that defendant's negligence had caused injury to plaintiff, but that plaintiff was entitled to no damages because he had not incurred more than \$3,000 in accident-related medical expenses. R. 201-203.

15. Subsequent to trial, plaintiff moved for judgment notwithstanding the verdict, or alternatively, a new trial on damages, asserting, *inter alia*, it was legal error to make plaintiff prove and to require the jury to find by a preponderance of the evidence that plaintiff had incurred in excess of \$3,000 in accident-related medical expenses, before the jury would be allowed to award damages. R. 210-211.

16. The court denied plaintiff's motion. R. 254-255.

SUMMARY OF ARGUMENTS

POINT I.

The trial court incorrectly interpreted U.C.A. § 31A-22-309(1)(a) to require submission of a special interrogatory to the jury which prohibited the jury from awarding damages to Plaintiff until the jury first found, by a preponderance of the evidence, that

plaintiff had incurred more than \$3,000 in medical expenses related to his automobile-accident (in other words that plaintiff had met “threshold”). By its interpretation, the trial court created a new burden of proof for plaintiff not authorized by the statute.

Rules of statutory construction require the court of appeals to interpret a statutory provision according to its plain language and within the context of its statutory scheme. Following such rules, the intent of U.C.A. § 31A-22-309(1)(a) was not to create a burden of proof at trial for plaintiff, but to provide a pre-adjudicative screening process to remove less-severe car accident cases from the court system. Through the overall no-fault statutory scheme and U.C.A. § 31A-22-307(2)(e), the legislature established procedures to screen non-threshold cases from the court system. Plaintiff met threshold, as acknowledged by Defendant’s own liability carrier through evaluation and payment of medical bills in excess of \$3,500. Defendant failed to contest by motion, the plaintiff’s right to pursue damages in court and plaintiff was therefore entitled to maintain his claims at trial without a contest over the amounts of specific medical bills.

POINT II.

During litigation, plaintiff prepared to prove and at trial did prove his case on the required elements of negligence and causation of injury. Just two days before trial, the court ordered that these would be the only issues presented to the jury for resolution. R. 83-84. By informing Plaintiff on the first day of trial that the jury would be presented with a threshold question and that damages would be contingent on the jury’s finding, the court unexpectedly and unfairly saddled Plaintiff with a new burden of proof, and transformed the

nature of the trial. Defendant focused his trial attack at creating questions on certain treatments received by plaintiff and the amount of those bills. He was thus enabled to undermine the real issues in the case and preclude plaintiff from any recovery.

The trial court compounded the effect of its legal error by precluding plaintiff from adducing evidence that defendant's own liability carrier had acknowledged, through evaluation and payment of plaintiff's bills, that plaintiff had met threshold.

POINT III.

The purpose of U.C.A. § 31A-22-309(1)(a) would be defeated, and enormous judicial and litigant resources would be wasted through adopting the trial court's interpretation of the statutory provision. Resolution of the threshold question need not and should not take place at the end of a full-fledged trial. A system is already in place to resolve the threshold question at the threshold of a legal case.

As evidenced by the trial court's statements during hearing of plaintiff's motion for judgment notwithstanding the verdict, guidance is needed from the appellate courts on the meaning and application of the no-fault statutory scheme, including U.C.A. § 31A-22-309(1)(a).

ARGUMENTS

POINT I

THE PLAIN LANGUAGE OF THE NO-FAULT STATUTORY SCHEME DOES NOT CREATE A NEW BURDEN OF PROOF AT TRIAL, BUT PROVIDES A PRE-ADJUDICATIVE SCREENING PROCESS.

The court should reverse the trial court's Judgment and denial of plaintiff's Motion for Judgment Notwithstanding the Verdict, since the Judgment is based on the trial court's legal error. The trial court erroneously submitted a no-fault threshold question to the jury, prohibiting the jury from awarding any damages, unless it first found, by a preponderance of evidence, that plaintiff's accident-related medical bills exceeded \$3,000.

By enacting the no-fault automobile insurance scheme, including the \$3,000 medical expense threshold to maintain a claim for general damages, the Utah State Legislature did not create an additional burden of proof for plaintiffs suing for compensation from an automobile collision, nor did it intend to require a full-fledged civil trial to determine whether a given claim should have been resolved through the court system, or, whether it belonged, all along, in the no-fault system. The plain-language intention of the threshold statute was to screen less-severe cases from the court system, and, ostensibly, to lessen the burden on the trial courts and conserve judicial resources. *Warren v. Melville*, 937 P.2d 556, 562 (Utah App. 1997), *Bear River Mut. Ins. Co. v. Wall*, 937 P.2d 1282, 1285 (Utah App. 1997). *See also*, 12A Mark S. Rhodes, *Couch on Insurance* 2d § 45:667, at 271 (rev. ed. 1981) (explaining "no-fault plans are designed to limit the number of common law tort suits

arising out of automobile accidents. The mechanism for determining which claims are serious enough to be the subject of litigation is the threshold."), *George v. Welch*, 997 P.2d 1248, 1251 (Colo. Ap. 1999) ("[T]he purpose of the threshold requirement [in no-fault scheme] is to keep minor claims from clogging the courts."), *Montgomery v. Daniels*, 38 N.Y.2d 41, 50-51; 378 N.Y.S.2d 1, 8-9; 340 N.E.2d 444 (1975), (stating that one purpose of no-fault law was to ease the strain placed on the state judicial system by tort litigation), *Creswell v. Medical W. Community Health Plan*, 419 Mass 327, 644 N.E.2d 970 (1995) (stating the intent of no-fault scheme was, in part, to reduce the number of small motor vehicle tort cases being entered in the courts) , *Dairyland Ins. Co. v. Starkey*, 535 N.W.2d 363 (Minn 1995) (citing *Schmidt v. Clothier*, 338 N.W.2d 256, 260 (Minn. 1983) for the proposition that a purpose of the no-fault law was to ease the burden of litigation on the courts).

U.C.A. § 31A-22-309(1)(a), states in relevant part:

A person who has . . . direct benefit coverage under a policy which includes personal injury protection ***may not maintain*** a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

. . .

(v) ***medical expenses to a person in excess of \$3,000.***

U.C.A. § 31A-22-309(1)(a) (emphasis added). As set forth, a plaintiff "may not maintain" a cause of action for general damages unless he has sustained medical expenses in excess of \$3,000. This requirement complements and works in connection with the \$3,000 minimum

personal injury protection (“PIP”) coverage of U.C.A. § 31A-22-307(1)(a). As explained by the Utah Supreme Court in *Allstate Insurance Co. v. Ivie*, 606 P.2d 1197, (Utah 1980),

Until the threshold requirements are met, the injured party is limited to his direct benefit coverage. If his injuries meet the threshold requirements, then he may maintain a claim for general damages.

Id. at 1200. Thus, according to the statutory scheme, a PIP insurer must approve and pay the \$3,000 in coverage before the insured is procedurally allowed to maintain a cause of action for general damages.

The no-fault statutory scheme also provides an avenue for resolving any dispute after suit is filed, as to whether the plaintiff has legitimately met threshold:

In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant’s medical services or expenses.

Utah Code Ann. § 31A-22-307(2)(e) (emphasis added). Note, this pre-trial process is consistent with the words “may not maintain” contained in § 31A-22-309(1)(a). A plaintiff can only be precluded from maintaining a claim for general damages by removing the claim from civil litigation. Conversely, to submit the threshold question to a jury does not prevent a plaintiff from maintaining a claim for general damages. Jury resolution of a threshold issue renders the above-quoted statutory provisions meaningless and defeats the statutes’ ostensible purpose of keeping minor cases from clogging up the courts’ dockets.

In the case at bar, plaintiff exceeded threshold before ever filing suit. This was acknowledged by State Farm Insurance Company, defendant's own liability carrier, through its evaluation and payment of more than \$3,500 of plaintiff's medical bills. Defendant never made any motion, as provided for in § 31A-22-307(2)(e), to dispute plaintiff's having met threshold or to prevent plaintiff from maintaining a cause of action for general damages. Plaintiff did maintain a cause of action for general damages, and was entitled to do so without "threshold" being unexpectedly inserted as the main issue in the case and without unexpectedly being saddled with a new burden of proof at trial.

Nowhere have Utah appellate courts been asked to interpret U.C.A. § 31A-22-309(1)(a) to create a new burden of proof for plaintiffs in car accident cases. While *CT v. Johnson*, 1999 UT 35, 977 P.2d 479 (Utah 1999), discusses award of general damages where \$3,000 in medical expenses were not awarded, it is clear from a reading of the case that no challenge was exerted on appeal to the trial court's decision to submit a "threshold" interrogatory to the jury. The validity of that practice was not before the court and has never been addressed by Utah appellate courts.

Unlike *Johnson*, in the case *sub judice*, plaintiff does challenge the validity of submitting a \$3,000 medical expense threshold interrogatory to the jury, on the basis of Utah Code Ann. §§ 31A-22-306 through 309. Had the Utah Supreme Court been faced with the issue of submitting a "threshold" interrogatory to the jury, it certainly would have struck that

practice down, under its own adopted rules of statutory construction. In *Johnson*, the court stated:

“When faced with a question of statutory construction, we look first to the plain language of the statute.” *Stephens v. Bonneville Travel, Inc.*, 935 P.2d 518, 520 (Utah 1997) (citation omitted). “We presume that the legislature used each word advisedly and give effect to each term according to its ordinary and accepted meaning.” *Nelson v. Salt Lake County*, 905 P.2d 872, 875 (Utah 1995) (citation omitted). Furthermore, “courts are not to infer substantive terms into the text that are not already there. ***Rather, the interpretation must be based on the language used, and the court has no power to rewrite the statute to conform to an intention not expressed.***” *Berrett v. Purser & Edwards*, 876 P.2d, 367, 370 (Utah 1994) (citations omitted).

Id at ¶ 31. (Emphasis added).

The plain language of U.C.A. §§ 31A-22-309(1)(a) and 31A-22-307(2)(e) does not create a new burden of proof for plaintiffs at trial, nor does it provide for the jury to determine at the end of a trial whether plaintiffs have the right to maintain their claim for general damages through trial. The plain language creates a pre-adjudicative screening process to determine if one can maintain a claim for general damages. Under the applicable standard of review, the court of appeals should properly and definitively interpret the statutory provisions according to their plain language and within the meaning of the no-fault statutory scheme. Accordingly, the court of appeals should reverse the lower court rulings and enter judgment for plaintiff.

POINT II

PLAINTIFF PREVAILED ON ALL REQUIRED ELEMENTS AT TRIAL AND SHOULD HAVE BEEN AWARDED DAMAGES.

Over several months of litigation, plaintiff prepared to meet his burden of proof at trial. Two days before trial, February 2, 2004, the court entered an order, pursuant to the parties stipulation (R. 83-84), finding defendant negligent and that defendant's negligence had proximately caused the collision. R. 83-84. The court also ordered that the only issues for the jury were causation of plaintiff's injuries and the amount of plaintiff's damages:

The issues presented to the jury for decision *will be limited to proximate causation of Plaintiff's injuries and to the amount of Plaintiff's damages.*

R. 83-84. (Emphasis added).

Plaintiff came to trial prepared to prove the remainder of his case. However, on the first day of trial, the court informed the parties of its intention to require a jury finding that plaintiff had met, by a preponderance of the evidence, the \$3,000 no-fault medical-expense threshold outlined in U.C.A. § 31A-22-309, before the jury could award damages. That dramatically and unfairly changed the nature of the case and trial. While plaintiff did finish proving his case and prevailed on the legal elements, the jury did not award damages because of the prohibitive instruction of the court on the threshold issue.

Taking advantage of the court's decision to include threshold in the trial, the defense largely ignored issues of negligence, causation, and damages and, instead, focused

its attack on challenging the relatedness and amount of certain medical bills, all in an effort to cause the jury to question bills in excess of \$3,000. Defendant was thus allowed to undermine plaintiff's whole case by simply attacking a few of the bills. The significance and meaning of the trial was thereby transformed from the amount of proper compensation for plaintiff, to precluding plaintiff from any recovery based on a technicality that should not have been before the jury.

The legal error of allowing defendant to contest threshold and requiring the jury to judge the validity of plaintiff's medical expenses before awarding general damages, was compounded when the court precluded plaintiff from adducing evidence of the evaluative process performed by defendant's liability carrier, the true party in interest, wherein it acknowledged the relatedness of more than \$3,500 of plaintiff's medical bills to the accident. Defendant was thus allowed to hypocritically make threshold the major issue in the case.

POINT III

INTERPRETING U.C.A. § 31A-22-309(1)(a) TO CREATE A NEW BURDEN OF PROOF DEFEATS ITS OSTENSIBLE PURPOSE AND IS AN ENORMOUS WASTE OF JUDICIAL AND LITIGANT RESOURCES.

As stated above, the ostensible purpose of U.C.A. § 31A-22-309(1)(a) is to lessen the burden on trial courts and conserve judicial resources by providing resolution of less-severe cases outside the court system. This purpose is defeated and enormous judicial

as well as litigant resources are wasted by going through a full-fledged trial, as happened in the case at bar, just to get an answer from the jury that a plaintiff's case did not meet threshold and never should have been tried at all.

The issue of judicial resources and court dockets in regard to non-threshold automobile cases should be of concern to the Utah appellate judiciary. During hearing of Plaintiff's Motion for Judgment Notwithstanding the Verdict, the court revealed that it always submits a threshold question to the jury on automobile cases and apparently will continue to do so until an appellate court instructs otherwise:

And I—I guess the truth is, Mr. Raty, you may be right, but no one's going to decide until it goes to an appellate court. ***I mean this is every case I try, I make the same decision every case.*** If it's different, I wish they'd tell me, and they will, they won't hesitate.

R. 268 (5:19-23). (Emphasis added).

Judicial and litigant resources need not and should not be wasted. A full-fledged trial is unnecessary to determine if a plaintiff should be allowed to maintain an award for general damages in court. As discussed above and outlined in U.C.A. §§ 31A-22-306 through 309, a much more economical system has already been established for directing cases to the proper resolution venue. It is as follows: The no-fault insurer performs an evaluation of medical bills submitted by the victim of an automobile accident to determine if the treatment is related and the bills reasonable. If the insurer does not believe they are,

it does not pay them. Often, the no-fault insurer hires a medical doctor to assist in this evaluation.

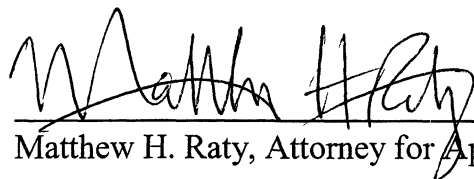
Once the no-fault insurer establishes satisfaction of threshold through approval and payment of \$3,000 in medical bills, the plaintiff may file his case for general damages. Thereafter, defendant may make a motion with the court contesting the relatedness and/or amount of the medical bills. If defendant fails so to move, plaintiff is allowed to maintain his claim for general and other damages at trial. Yet, it is contrary to law, a perversion of the statutory scheme's plain language, and grossly unfair to allow defendant to raise a threshold issue at trial for the jury's decision, after plaintiff has already maintained a claim for general damages.

CONCLUSION

The court should reverse the lower court's denial of Plaintiff's Motion for Judgment Notwithstanding the Verdict and remand with the order to enter judgment on behalf of the plaintiff, along with an order for a new trial, solely on the amount of plaintiff's damages. The jury found, and the court entered findings, that defendant was negligent and that defendant's negligence proximately caused injury to plaintiff. The prerequisites were thus met for an award of damages to plaintiff. It was legal error for the court to create an additional burden of proof for plaintiff by prohibiting an award of damages until the jury found, by a preponderance of evidence, that plaintiff had incurred in excess of \$3,000 in accident-related medical bills. Interpreting U.C.A. § 31A-22-309(1)(a) to create a burden

of proof at trial is contrary to its plain language and that of the no-fault statutory scheme, and defeats their purpose of screening less severe cases from civil trial. Such a construction also results in enormous waste of judicial and litigant resources.

DATED AND SUBMITTED this 17th day of February, 2005.


Matthew H. Raty, Attorney for Appellant

ADDENDUM

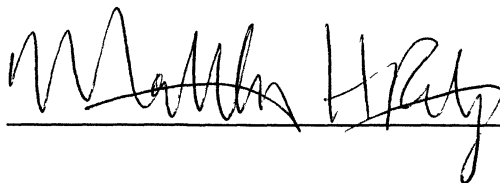
- Addendum 1: R. 83-84, Order on Defendant's Liability
- Addendum 2: R. 167-169, Special Verdict Form
- Addendum 3: R. 268, Hearing on Motion for Judgment Notwithstanding the Verdict

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S BRIEF** was served upon defendant's counsel at the address listed below, by depositing the same in the United States mail, postage pre-paid on the 17th day of February, 2005.

Attorney for Defendant

Kristin A. VanOrman
STRONG AND HANNI
3 Triad Center, Suite 500
Salt Lake City, Utah 84180



Q:\Vaughn\APPEAL\Appellant's brief

Addendum 1

FILED DISTRICT COURT
Third Judicial District

FEB 02 2004

SALT LAKE COUNTY

Deputy Clerk

Mark C. McLachlan (#2207)

MARK C. McLACHLAN & ASSOCIATES, L.C.

Attorney for Plaintiff

First National Bank Bldg.

480 East 400 South, Suite 200

Salt Lake City, Utah 84111

Telephone (801) 521-0123

Facsimile (801) 521-0177

Matthew H. Raty (#6635)

RATY & KRAMER, L.L.C.

First National Bank Bldg.

480 East 400 South, Suite 200

Salt Lake City, Utah 84111

Telephone (801) 521-0190

Facsimile (801) 521-0177

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GERALD VAUGHN,

Plaintiff,

vs.

DARIN ANDERSON,

Defendant.

**ORDER ON DEFENDANT'S
LIABILITY**

Civil No. 010908321

Judge Robert K. Hilder

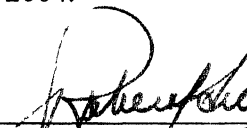
The parties have stipulated to Defendant's liability in the above-referenced matter, specifically, that Defendant was negligent and that Defendant's negligence proximately caused the collision in the above-referenced matter. Based upon the stipulation of the parties:

IT IS HEREBY ORDERED:

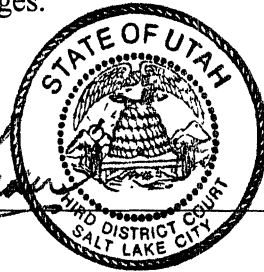
1. The court shall enter a finding and the jury shall be instructed that Defendant was negligent and that Defendant's negligence proximately caused the collision.

2. The issues presented to the jury for decision will be limited to proximate causation of Plaintiff's injuries and to the amount of Plaintiff's damages.

DATED this 29 day of January, 2004.

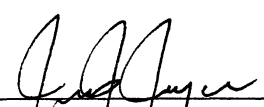


ROBERT K. HILDER
Honorable Judge



Approved as to form:

DATED this 29 day of January, 2004.



STRONG & HANNI
Attorney for Defendant

Addendum 2

FILED DISTRICT COURT
Third Judicial District

FEB 06 2004

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

GERALD VAUGHN,

Plaintiff,

vs.

DARIN ANDERSON,

Defendant.

SPECIAL VERDICT FORM

Civil No. 010908321

Judge Robert Hilder

MEMBERS OF THE JURY:

Please answer the following questions from a preponderance of the evidence. If you find the evidence preponderates in favor of the issue presented, answer "yes." If you find the evidence is so equally balanced that you cannot determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer "no." Also, any damages assessed must be proven by a preponderance of the evidence.

1. The parties agree that Darin Anderson was negligent. Considering all of the evidence in this case, do you find from a preponderance of the evidence that the negligence of the defendant, Darin Anderson, was the proximate cause

of any of the plaintiff Gerald Vaughn's injuries?

Yes X

No _____

If your answer to Question No. 1 is "No", do not answer the remaining questions.

If your answer to Question No. 1 is "Yes," please continue.

2. From a preponderance of the evidence, did the plaintiff, Gerald Vaughn, sustain a permanent disability, a permanent impairment, or a permanent disfigurement, as a proximate result of the accident?

Yes _____

No X

3. From a preponderance of the evidence, has the Plaintiff Gerald Vaughn sustained \$3,000 or more in medical expenses as a proximate result of the accident?

Yes _____

No X

If your answers to Questions No. 2 and 3 are both "No", do not answer Question Number 4. If either or both answers to Questions No. 2 and 3 is "Yes", answer Question No. 4.

4. State from a preponderance of the evidence the amount of general and special damages sustained by Plaintiff Gerald Vaughn as a result of the accident:

Special Damages

Past Medicals \$ _____

Future Medicals \$ _____

General Damages \$ _____

TOTAL DAMAGES \$ _____

Dated this 6th day of February, 2004.


Foreperson

Addendum 3

1 IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY
2 SALT LAKE COUNTY, STATE OF UTAH

3 -o0o-

4 GERALD VAUGHN,

5 Plaintiff,

6 vs.

7 DARIN ANDERSON,

8 Defendant.

)
)
) Case No. 010908/321

)
) MOTION

)
) (Videotape Proceedings)

9 -o0o-

10
11 BE IT REMEMBERED that on the 17th day of May,
12 2004, commencing at the hour of 8:03 a.m., the above-
13 entitled matter came on for hearing before the HONORABLE
14 ROBERT HILDER, sitting as Judge in the above-named Court
15 for the purpose of this cause, and that the following
16 videotape proceedings were had.

17 -o0o-

18 A P P E A R A N C E S

19 For the Plaintiff:

MATTHEW H. RATY
Attorney at Law
Raty & Kramer
480 East 400 South, #200
Salt Lake City, Utah 84111

20
21
22 For the Defendant:
23 **FILED DISTRICT COURT**
Third Judicial District

KRISTIN A. VAN ORMAN
Attorney at Law
Strong & Hanni
3 Triad Center, #500
Salt Lake City, Utah 84180

24 NOV 23 2004

25 SALT LAKE COUNTY

By _____
Deputy Clerk

1
ALAN P. SMITH, CSR
385 BRAHMA DRIVE (801) 266 0320
SALT LAKE CITY UTAH 84107

ORIGINAL



P R O C E E D I N G S

THE COURT: Mr. Raty, it's your motion and I've read it carefully. I have to be very frank with you. I certainly have sympathy for your client and feel like you tried a very fine case; but everything in there we argued about at trial, nothing's changed for me. Tell me why it has. I mean, I just don't understand what's new except that you filed a motion.

MR. RATY: Okay. Thank you, your Honor.

As you know, your Honor, we--we tried this case in February--

THE COURT: Uh huh.

MR. RATY: --the first week of February of this year. And at the close of the defendant's evidence, the plaintiff moved for a directed verdict on all issues except the amount of damages in the case.

THE COURT: Uh huh.

MR. RATY: And you denied that motion and the jury returned a verdict finding defendant had proximately caused injury to the plaintiff, but did not award any damages, as it had been prohibited from doing that based on a finding that plaintiff had not met the \$3,000 threshold in medical expenses.

Now, looking at the statute, the--the Utah Legislature created a--a scheme here. In Utah Code Annotated

1 31-8-22--or dash-22-dash 306 through 309. And that statutory
2 scheme, as you read through it, was obviously implemented to
3 keep out of court, keep out of your busy docket, certain types
4 of cases. Those cases--

5 THE COURT: I'm not sure they were thinking too much
6 about my docket, in all candor; but they did want some
7 incentive to provide the coverages for financial
8 responsibility in the State. I think that was at the core. I
9 mean, it has the effect, certainly, of limiting the number of
10 cases that come to court.

11 MR. RATY: Sure. And--and I would submit that was
12 the purpose of the statute. You read the language and I think
13 that is clear.

14 Now, the language, 309 says that a plaintiff may not
15 maintain--may not maintain a--a claim for general damages in
16 court unless he's met a threshold. And one of the--one of the
17 criteria is \$3,000 in medical expenses. Well, who makes that
18 determination? According to the statute, not the court, not
19 the jury.

20 THE COURT: Now, how does the statute say not the
21 court?

22 MR. RATY: Well, you read rule--or you read Section
23 307--let me give you the exact cite there. 307-2-(e) and that
24 sets forth the procedure to be followed by the court if
25 threshold is contested. Now I will read that to you, your

1 Honor, it says--

2 THE COURT: Let me get it in front of me. I--

3 MR. RATY: Sure.

4 THE COURT: --I know it, but let's be reading it
5 together.

6 Okay. Go ahead.

7 MR. RATY: Thank you.

8 In disputed cases, a court, on its own motion or on
9 the motion of either party, may designate an impartial medical
10 panel of not more than three licensed physicians, to examine
11 the claimant and testify on the issue of the reasonable value
12 of the claimant's medical services or expenses.

13 Now, no motion was made by defendant. Plaintiff
14 certainly didn't make a motion, because he knew he had met
15 threshold, he--he had exceeded the \$3,000 limit as
16 acknowledged by defendant's own liability carrier, State Farm.
17 And I submitted those letters to you.

18 State Farm wrote him and said, you--you've now
19 exceeded \$3,000 in medical bills; in fact, in one of the
20 letters, they talk about meeting threshold and that he's got
21 to exceed more than \$3,000. So, we met it, defendant did not
22 make any motion to the Court disputing that threshold had been
23 made.

24 We were allowed under the statute to maintain a
25 claim for general damages here in your Court, and we should

1 have been allowed to maintain that--

2 THE COURT: But I think they're different things. I
3 think what you point out in the statute is about determining
4 entitlement under the (inaudible) statute. What I deal with
5 is a threshold requirement before the jury can award general
6 damages. And once it comes before me in that context, I do
7 not believe the legislature intended to substitute for the
8 jury that's empaneled, to create such a cumbersome system. I
9 mean, if that--if the--if the legislature was trying to give
10 the court some relief, that's not the way to do it.

11 I think it then becomes simply a factual question
12 that you must meet as a threshold to get the general damages,
13 it's factual, it's for the jury, and it's necessarily so and
14 it's also important at that stage that the jury be permitted
15 to exercise its judgment and not be bound by a decision made
16 by a carrier who stands in a different relationship to the
17 plaintiff than the party contesting the matter in this court.

18 I mean, I know that's in there. I just think it's
19 there for a different purpose. And I--I guess the truth is,
20 Mr. Raty, you may be right, but no one's going to decide until
21 it goes to an appellate court. I mean, this is every case I
22 try, I make the same decision every case. If it's different,
23 I wish they'd tell me, and they will, they won't hesitate. I
24 don't think they've said it, I think there's case law that
25 says the opposite. But I think I--I'm not in a position to

1 piecemeal say, I'm going to do it differently with you, I may
2 as well stick to what I do two to three months and let you
3 take it up, which, certainly is not only your right, but if
4 you think it's the appropriate approach, I'd encourage you to
5 do it.

6 MR. RATY: Okay.

7 THE COURT: But--but I--you--you've preserved the
8 issue, but we're just not seeing it the same way.

9 MR. RATY: All right. And I can see--and--and I
10 acknowledge, that's been a--a customary practice in the courts
11 for many years; but as we know, custom's not--

12 THE COURT: No. I know, but the--it's got to be
13 changed on the appellate level. I mean, I could be the one to
14 change it here and then there might be an appeal from the
15 other side. I'm not sure how many minutes it would take Ms.
16 Van Orman to file the notice, but it would be pretty quick.
17 So, I mean, someone's going to have to take it up. Your
18 argument's not without some logic, it's just that I don't
19 think it's what was intended. And it is a legal argument.

20 MR. RATY: Right.

21 THE COURT: I think it's one that could be addressed
22 up there. And I'm not sure you'd be doing anyone a favor, in
23 a sense, but you sort of will, you'll clarify it.

24 And--but your other issues, of course, go to
25 experts, which are very much in the sound discretion of the

1 Court. I mean, I--you're welcome to argue, I'm not here to
2 cut you off, you've briefed it, I've read it. It's just that
3 they were carefully considered at the time, and those, I think
4 in all candor, highly unlikely to be reversed because of the
5 discretion element. If you're right, you're right on this
6 point.

7 MR. RATY: Okay. All right. Well, I appreciate it,
8 your Honor. I won't--

9 THE COURT: That sort of cuts out Ms. Van Orman's
10 argument a little bit.

11 MS. VAN ORMAN: Although I just would like to
12 clarify some things--

13 THE COURT: You can put them on the record, if you
14 wish.

15 MS. VAN ORMAN: --just for Mr. Raty's sake.

16 THE COURT: And you may respond if you want the
17 benefit of the record, because you may be taking it up and you
18 may want something--

19 MR. RATY: Right.

20 THE COURT: That's fine.

21 MR. RATY: Okay.

22 MS. VAN ORMAN: If--if you look at the statute, I
23 think there's a reason that it's not the customary practice
24 for everybody to arbitrate these matters before filing suit or
25 whatnot. I understand his provision is in 2(e); however, if

1 you look at 2, Provision 2 in its entirety, what they're
2 talking about is the reasonable value of the medical expenses,
3 not what was necessarily incurred in the accident. It's the
4 value of the services.

5 In other words, if we contested Chiropractor A or--

6 THE COURT: Uh huh.

7 MS. VAN ORMAN: --Doctor B saying his charges were
8 excessive--

9 THE COURT: Well, that's what I'm thinking. It--it--
10 -it--

11 MS. VAN ORMAN: --in the community--

12 THE COURT: --it's a mechanism for the insurers to
13 deal with it rather than--yeah.

14 MS. VAN ORMAN: Right. But we're also not talking
15 about--the jury was asked, Was--did Mr. Vaughn sustain \$3,000
16 as a result of this accident.

17 THE COURT: Uh huh.

18 MS. VAN ORMAN: We stipulated, in fact, that the
19 charges of the providers were reasonable. And I think Section
20 2 talks about the reasonable value of the provider, so if we
21 hadn't stipulated to that and if that was an issue where, you
22 know, some chiropractor comes in and charges \$700 a visit,
23 obviously, we're going to say that's not the practice in the
24 community.

25 THE COURT: Uh huh.

1 MS. VAN ORMAN: And you look at that and they're
2 talking about relative value studies, what to look at there.

3 THE COURT: Yeah. I know.

4 MS. VAN ORMAN: Section (b) talks about seventy-
5 fifth percentile. Then there's the schedules, then the
6 commissioner of insurance, then you get to (e) and that's when
7 you talk about, all right, if you get to the bottom of it and
8 there's still a dispute, take it before a medical panel and
9 they'll tell you what's the reasonable amount in this
10 community.

11 This is not on what is related to the accident.
12 This is what is the charges, what are reasonable.

13 THE COURT: Your fundamental proximate cause
14 argument, which is what the argument of the trial was all
15 about.

16 MS. VAN ORMAN: Exactly.

17 THE COURT: What most of them are about.

18 MS. VAN ORMAN: Exactly. And so I just wanted to
19 point that out for the record, that I think the--the entire
20 arbitration panel is a last resort on if there's a dispute as
21 to the amount of the--the value of the medical services, how
22 much the providers charge. And I think we stipulated to that.

23 THE COURT: On the other hand, I'm not aware of
24 anything that specifically states that--that whether they met
25 threshold should be a separate jury question. I just know we

1 do it all the time, that makes sense to me, but that may be an
2 issue that needs to be addressed, you know.

3 MS. VAN ORMAN: Well, there--

4 THE COURT: And I--I leave it in your hands, both of
5 you.

6 MS. VAN ORMAN: And there is a standard in Utah that
7 says it has to be reasonable and necessary.

8 THE COURT: Uh huh.

9 MS. VAN ORMAN: The \$3,000 has to be reasonable and
10 necessary. Well, reasonable is the amount; but then
11 necessary. And I've taken this before the Supreme Court now
12 twice in PIP cases, that the charges have to be necessarily
13 related to the accident and that's an issue for the jury.

14 We've had--I've had a few PIP cases that, oh,
15 they've arisen into huge bad faith allegations where
16 essentially what it boiled down to is, were those \$3,000
17 incurred, were they a result of the accident? Not just
18 because they were incurred, it's not a strict liability. It's
19 essentially, were they related and the judges have all said
20 it's--it's an issue for the jury, it's an issue of fact.

21 THE COURT: Uh huh.

22 MS. VAN ORMAN: So, that's where we are.

23 THE COURT: And I'm still there.

24 Mr. Raty, do you wish the benefit of the record any
25 further?

1 MR. RATY: I think it's all in my brief, your Honor.
2 THE COURT: It is. It's well-briefed.
3 Ms. Van Orman, will you prepare an order denying the
4 motion?
5 MS. VAN ORMAN: I will, your Honor.
6 THE COURT: And I may or may not read about it.
7 Thank you.
8 MR. RATY: Thank you, your Honor.
9 MS. VAN ORMAN: Thank you.
10 (Whereupon, this hearing was concluded.)
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* * *

TRANSCRIBER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Toni Frye, do hereby certify:

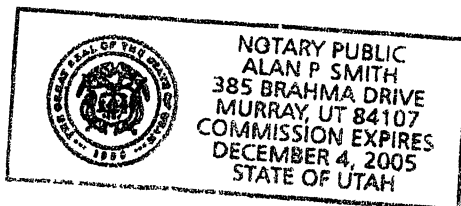
That I am a transcriber for Alan P. Smith, Certified Shorthand Reporter and a Certified Court Transcriber of Tape Recorded Court Proceedings; that I received an electronically recorded videotape of the within matter and under his supervision have transcribed the same into typewriting, and the foregoing pages, numbered from 1 to 11, inclusive, to the best of my ability constitute a full, true and correct transcription, except where it is indicated the Videotape Recorded Court Proceedings were inaudible.

I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of this suit.

Dated at Salt Lake City, Utah, this 22nd day of
November, 2004.

Toni Frye
Transcriber

Subscribed and sworn to before me this 22nd day
of November, 2004.



Alan P. Smith
Notary Public

(S E A L)

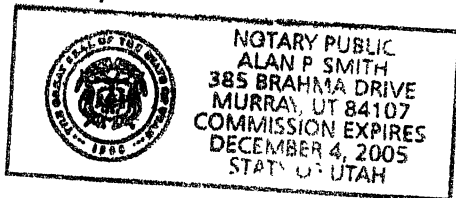
REPORTER'S CERTIFICATE

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

I, Alan P. Smith, Certified Shorthand Reporter,
Notary Public and a Certified Court Transcriber of Tape
Recorded Court Proceedings within and for the State of Utah,
do certify that I received an electronically recorded
videotape of the within matter and caused the same to be
transcribed into typewriting, and that the foregoing pages,
numbered from 1 to 11, inclusive, to the best of my knowledge,
constitute a full, true and correct transcription, except
where it is indicated the Videotape Recorded Court Proceedings
were inaudible.

I do further certify that I am not counsel, attorney
or relative of either party, or clerk or stenographer of
either party or of the attorney of either party, or otherwise
interested in the event of this suit.

Dated at Salt Lake City, Utah, this 23rd day of
November, 2004.



(S E A L)


Notary Public