2005

Beiwi Li v. Shuyu Zhang : Reply Brief

Utah Court of Appeals

IN THE UTAH SUPREME COURT
STATE OF UTAH

BEIWI LI, Personal Representative of the Estate of Beizhong Li, Deceased, Plaintiff/Appellee v. SHUYU ZHANG, ENTERPRISE RENT-A-CAR COMPANY OF UTAH, a Utah Corporation, GEICO INDEMNITY COMPANY, a Maryland Corporation and JOHN DOE, whose true name is not known. Defendant/Appellant.	)	Appellate Case No. 20050583-SC

REPLY BRIEF OF APPELLANT ENTERPRISE RENT-A-CAR COMPANY OF UTAH

ON REVIEW BY WRIT OF CERTIORARI, THE UTAH COURT OF APPEALS' DECISION REVERSING SUMMARY JUDGMENT ENTERED IN THE THIRD JUDICIAL DISTRICT COURT BY THE HONORABLE TIMOTHY R. HANSON

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The Utah Court of Appeals erred when it interpreted Utah Code Ann. § 31A-22-314 to require rental companies to provide indemnity protection or coverage even when the rental customer has "other valid or collectible insurance coverage." The Court of Appeals' interpretation of Utah Code Ann. § 31A-22-314 is contrary to the established principles of statutory interpretation. In addition, the Court of Appeals' decision is premised on a misunderstanding of the facts, and an erroneous application of public policy considerations. Accordingly, Enterprise requests that the decision of the Court of Appeals be reversed and that the trial court's grant of summary judgment be affirmed.

ARGUMENT

I. THE COURT OF APPEALS ERRED WHEN IT INTERPRETED U.C.A. § 31A-22-314 TO REQUIRE INDEMNITY PROTECTION OR COVERAGE EVEN WHEN THERE IS "OTHER VALID OR COLLECTIBLE INSURANCE."

The Court of Appeals has interpreted Utah Code Ann. § 31A-22-314 as requiring rental car companies to assume the role of a secondary or excess insurer. This interpretation of Utah Code Ann. § 31A-22-314 is not supported under the plain language of the statute, and is in fact contradictory to its plain meaning. Utah Code Ann. § 31A-22-314 provides:

> A rental company shall provide its renters with primary coverage meeting the requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, ***unless there is other valid or collectible insurance coverage***.

(Emphasis added.) According to the plain language of Utah Code Ann. § 31A-22-314, a rental company is released from its obligation to provide coverage meeting the requirements of Title 41, Chapter 12a, when there is "other valid or collectible insurance coverage." Nothing in Utah Code Ann. § 31A-22-314 states that rental car companies must provide additional coverage or indemnity, or assume the duties of an excess or secondary insurer when there is "other valid or collectible insurance." Yet, this is exactly what the Court of Appeals interpreted Utah Code Ann. § 31A-22-314 to require.

The Court of Appeals' construction of Utah Code Ann. § 31A-22-314 runs afoul of well-established rules of statutory interpretation. First, the Court of Appeals interpreted the unambiguous language of Utah Code Ann. § 31A-22-314 to contradict the statute's plain meaning. See Bonham v. Morgan, 788 P.2d 497, 502 (Utah 1989) ("Unambiguous language in the statute may not be interpreted so as to contradict its plain meaning.") The plain meaning of Utah Code Ann. § 31A-22-314 is that rental car companies are relieved of their obligation to provide coverage meeting the requirements of Title 41, Chapter 12a, when there is "other valid or collectible insurance coverage." Accepting a doubtful interpretation of the word "primary," the Court of Appeals ignored § 31A-22-314's unambiguous language and interpreted it in such a way that contradicts its plain meaning.

Utah Code Ann. § 31A-22-314 removes a rental company's obligation to provide coverage satisfying the requirements of Title 41, Chapter 12a, when there is "other valid

or collectible insurance coverage." This plain meaning cannot be reconciled with the Court of Appeals' interpretation that requires rental companies to provide secondary or excess coverage even when there is "other valid or collectible insurance coverage."

Second, the Court of Appeals improperly inferred substantive terms into Utah Code Ann. § 31A-22-314 that appear nowhere in the text of the statute. As set forth above, Utah Code Ann. § 31A-22-314 makes no mention of the word "secondary" or "excess," and contains no language requiring rental companies to provide coverage above and beyond "other valid or collectible insurance coverage." However, the interpretation of § 31A-22-314 offered by Li's estate requires that these substantive terms be inferred into the statute. This Court has clearly and unmistakably forbidden this method of statutory construction. The Court has stated:

> A cardinal rule of statutory construction is that 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). See also, Green River Canal Co. v. Olds, 2004 UT 106, P25 (same); Bradley v. Payson City Corp., 2003 UT 16, P35 ("[W]e will not infer substantive provisions into a statute that are not expressly contained therein.")

Under the plain language of Utah Code Ann. § 31A-22-314, and Enterprise's interpretation of the same, no additional terms are needed in order to give the statute effect. Utah Code Ann. § 31A-22-314 simply means what is says. Li's interpretation of

Utah Code Ann. § 31A-22-314, however, requires that additional language be read into the statute. Li's interpretation would require Utah Code Ann. § 31A-22-314 to read as follows:

> A rental company shall provide its renters with primary coverage meeting the requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, unless there is other valid or collectible insurance coverage.
>
> ***If there is other valid or collectible insurance, the rental company shall provide secondary or excess coverage meeting the requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act.***

While Utah Code Ann. § 31A-22-314 does not include the second-emphasized paragraph set forth above, the Court of Appeals' interpretation of § 31A-22-314 effectively rewrites the statute to include this language. The rules of statutory construction do not permit this wholesale revision of statutory language.

In this case, it is undisputed that "other valid or collectible insurance coverage" was available to Li's estate, and that such insurance exceeded the minimum amount required under Utah law many times over. See Utah Code Ann. § 31A-22-304. Because there was "other valid or collectible insurance coverage," Utah Code Ann. § 31A-22-314 releases Enterprise from its obligation to provide any additional coverage to Li's estate. The Court of Appeals erred when it interpreted the unambiguous language of Utah Code § 31A-22-314 to contradict its plain meaning, and inferred substantive terms into the statute that are found nowhere in its text. Accordingly, the Court of Appeals' decision is

erroneous and should be reversed.

A. The Court of Appeals erred when it accepted Li's extrapolation of the word "primary".

Li's entire argument revolves around a single word found in Utah Code Ann. § 31A-22-314. Li asserts that because the legislature included the word "primary" in Utah Code Ann. § 31A-22-314, rental companies are only released from a duty to provide "primary" coverage when there is "other valid or collectible insurance coverage." (Brief of Appellee, p. 10.) In situations where there is "other valid or collectible insurance coverage," Li argues that the rental company then becomes obligated to provide "secondary" coverage. (See id., p. 11.) Again, nothing in Utah Code Ann. § 31A-22-314 refers to rental companies becoming "secondary" insurers; nevertheless, Li argues that this result can be inferred based on the statute's inclusion of the word "primary".

As set forth in Enterprise's opening brief, there are examples in the Insurance Code where the legislature has expressly assigned "primary" and "secondary" coverage obligations. For instance, Utah Code Ann. § 31A-22-303 provides, in relevant part:

> (b)(i) The liability insurance coverage of a permissive user of a motor vehicle business shall be ***primary*** coverage.
>
> (ii) The liability coverage of a motor vehicle business shall be ***secondary*** to the liability insurance coverage of a permissive user specified under Subsection (2)(b)(i).

U.C.A. § 31A-22-303(2). (Emphasis added.) See also, U.C.A. § 31A-22-305(6)(c) and

U.C.A. § 31A-22-305(10)(b)(iv).[1] While Li's estate purports to acknowledge these instances where the legislature has explicitly assigned "primary" and "secondary" coverage obligations, Li's estate makes no attempt to address this point other than to say that the failure of the legislature to give further detail "does not favor either litigant's position on § 31A-22-314(1)." (Brief of Appellee, p. 10.) With this, Enterprise disagrees.

Li's estate seeks to have this Court rewrite Utah Code Ann. § 31A-22-314 by inferring additional language which appears nowhere in the text. Enterprise, on the other hand, simply seeks to have the statute interpreted according to its plain language, and without the inference of additional substantive language. Had the legislature intended to make rental companies into "secondary" or "excess" insurers, it would have done so by

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[1] In its brief, Li refers to the Court of Appeals' analysis of the history of Utah Code Ann. § 31A-22-314, which reveals that a previous amendment to the statute specifically stated that a rental company shall provide its renters with "excess" or "secondary" coverage. (See Brief of Appellee, p. 12.) While the Court of Appeals found the legislative history of Utah Code Ann. § 31A-22-314 to be of little help in determining its proper interpretation, Enterprise believes it is significant that this previous amendment, which specifically required rental companies to provide "excess" or "secondary" coverage, was expressly superceded by the legislature in a subsequent amendment that sets forth the current language of Utah Code Ann. § 31A-22-314, which contains no reference to "excess" or "secondary" coverage. See Zhang, 2005 UT App 246, P9 (citing Act of February 19, 1998, ch. 329, § 6, 1998 Laws 1217, 1225.) Clearly, had the legislature intended Utah Code Ann. § 31A-22-314 to mean what Li's estate has interpreted it to mean, there would have been no reason for the subsequent amendment. See Visitor Information Center v. Customer Service Division, 930 P.2d 1196, 1198 (Utah 1997) (explaining that a change in the language of a statute indicates the legislature intended to change the original act.)

using express language similar to that found in Utah Code Ann. § 31A-22-303(2) or in the previous amendment to Utah Code Ann. § 31A-22-314. The fact that such language was not used demonstrates that Li's definition of the term "primary" is likely inconsistent with that of the legislature.

Utah Code Ann. § 31A-22-314 serves as a form of safety net to ensure that there is a minimum of $25,000 of indemnity protection or coverage available to victims of automobile accidents. If a customer does not have insurance coverage, or is mistaken about whether he or she has coverage, or misrepresents the existence of such coverage, then the rental company is responsible to provide up to $25,000 in liability coverage. This is the "primary" obligation under Utah Code Ann. § 31A-22-314. In such situations, there would be no other party with a superior obligation to provide indemnity protection or coverage than the rental company.

However, in situations where there is other coverage, i.e. other "valid or collectible insurance coverage" meeting the minimum statutory requirements, then the rental company is relieved of its obligation to provide coverage. Unlike the definition offered by Li, Enterprise's definition and application of the term "primary" gives full effect to the plain language of Utah Code Ann. § 31A-22-314 and does not require the inference of substantive additional language.

II. PUBLIC POLICY DOES NOT SUPPORT THE DECISION OF THE COURT OF APPEALS.

The Court of Appeals found Utah Code Ann. § 31A-22-314 to be subject to two competing reasonable interpretations and public policies. Li v. Zhang, et al., 2005 UT App 246, P12. While a strict adherence to the established rules of statutory construction would have revealed only one reasonable interpretation and no ambiguity, thereby making the consideration of public policy unnecessary, the Court of Appeals clearly erred when it found there were public policy considerations favoring Li's position.

A. The Court of Appeals unfairly interpreted the language of U.C.A. § 31A-22-314 against Enterprise.

One of the public policy considerations the Court of Appeals found supporting Li's position was that concerning the interpretation of ambiguous insurance policy provisions. The Court of Appeals stated, "as a matter of public policy, ambiguities or inconsistent provisions in insurance contracts are construed against the insurer and in favor of coverage." Zhang, 2005 UT App 246, P10 (citations omitted.) The Court of Appeals concluded that because Enterprise is self-insured, "statutory requirements are analogous to the provisions of a traditional contract of insurance and should be interpreted in favor of coverage when ambiguity exists." See id.

As set forth in Enterprise's opening memorandum, the Court of Appeals' decision to interpret Utah Code Ann. § 31A-22-314 the same as an ambiguous insurance policy provision not only appears to be completely unprecedented, but is also completely unfair.

In the context of an ambiguous insurance contract, courts interpret ambiguous provisions against the insurer because the insurer is the party responsible for drafting the provision. See Utah Farm Bureau Ins. Co v. Crook, 1999 UT 47, P6 ("Ambiguities are construed against the drafter - the insurance company - and in favor of coverage.") Unlike an insurer arguing over the proper interpretation and meaning of an insurance policy provision, Enterprise did not draft Utah Code Ann. § 31A-22-314 and it would be unfair to treat Enterprise as though it did.

In its brief, Li argues that the Court of Appeals' use of principles of insurance policy interpretation is justified because Utah Code Ann. § 41-12a-407(2) requires self-funded persons to pay the same benefits as an insurer issuing a conventional insurance policy. (Brief of Appellee, p. 14.) This argument misses the point entirely.

Requiring self-insurers to pay the same benefits as a traditional insurer has nothing to do with the rules of proper statutory interpretation. The Court of Appeals construed Utah Code Ann. § 31A-22-314, a legislative enactment, against Enterprise and in favor of coverage. None of the reasons underlying the public policy of construing ambiguous insurance policy provisions against the insurer and in favor of coverage exist in this case. Again, Enterprise did not draft Utah Code Ann. § 31A-22-314, and it would be unfair to treat it as though it did.

B. The Court of Appeals' decision is premised on a misunderstanding of the facts and fails to recognize the legislature's preeminent role in setting the public policy underlying Utah's statutory insurance scheme.

The Court of Appeals' decision suggests that, regardless of the amount of "other valid or collectible insurance" Li's estate has recovered, Enterprise must provide additional compensation because the estate's damages exceed the limits of that insurance. The Court of Appeals' opinion is premised on the understanding that Li's estate recovered $300,000 in insurance proceeds, but that Li's damages greatly exceed this amount. Zhang, 2005 UT App 246, P4. In Li's brief, we learn that this is not the case.

Li's estate recovered the $100,000 policy limit from Zhang's liability carrier, American Commerce. Li's estate also sought to recover the combined limits of Li's underinsured/uninsured motorist coverage ($200,000) from Geico Indemnity Company. In its brief, Li's estate explains that while it recovered the $100,000 policy limit of Li's underinsured motorist coverage, it settled its uninsured motorist claim for half of the policy limit ($50,000). (See Brief of Appellee, p. 3.) While Li's estate contends that this factual clarification does not change the issues before the Court, Enterprise believes this clarification highlights one of the reasons why the Court of Appeals' decision is so problematic.

As set forth in its opening memorandum, there has been no legal determination or finding made concerning the extent of Li's damages. The Court of Appeals' decision would necessarily require that the amount of damages be determined, in this case as well

as any other case involving a rental company, before there can be a determination as to a rental company's obligation to provide "secondary" or "excess" coverage. The net result of the Court of Appeals' decision is that there must first be a finding as to whether a plaintiff has been made whole by "other valid or collectible insurance" before it can be determined whether a rental company has an obligation to provide additional indemnity protection or coverage. Clearly, this cannot be what the legislature intended when it drafted Utah Code Ann. § 31A-22-314. [2]

In addition, the Court of Appeals' decision is erroneous because it overrides the preeminent role and expressed public policy of the legislature concerning the appropriate

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[2] In its brief, Li argues for the first time that Utah Code Ann. § 31A-22-314 is ambiguous in that it does not distinguish between which "primary coverage" is excused by which "other valid or collectible insurance coverage." (See Brief of Appellee, p. 7.) Li's argues that the $25,000 it seeks to collect from Enterprise is secondary only to the $100,000 liability coverage it recovered from Zhang, but not the $150,000 in combined UM/UIM coverage it recovered from Geico. Li's estate contends that the need to distinguish between these different types of coverages is important because, had there been no liability coverage available through Zhang, Enterprise's interpretation of Utah Code Ann. § 31A-22-314 would allow Li's Geico UM/UIM coverage to excuse its duty to provide primary liability coverage. (See id., p. 9.) Li's argument here demonstrates a misunderstanding of Enterprise's position.

Assuming the facts of this case were different and Zhang did not have liability coverage, the presence of Li's Geico UM/UIM coverage would not have excused Enterprise from providing liability coverage. That is because Zhang would not have had "other valid or collectible insurance" satisfying the requirements of Title 41, Chapter 12a. It is only when there is "other valid or collectible insurance" which satisfies Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, that a rental company is relieved of its obligation to provide coverage. Because it is undisputed that there was such coverage in this case, Enterprise has no obligation to provide additional coverage.

level of minimum coverage required under Utah law. As explained in Enterprise's opening brief, the Court of Appeals' decision changes the public policy of this State by creating a class of tort victims whose level of available compensation will depend entirely on whether the tortfeasor was driving a rental car at the time of the accident. The legislature has determined that the appropriate amount of mandatory liability coverage required by public policy is $25,000. See U.C.A. § 31A-22-304. In this case, Li's estate has recovered insurance proceeds far beyond that amount.

In its brief, Li's estate makes no attempt to explain why the public policy as expressed by the legislature in Utah Code Ann. § 31A-22-304 should have any different application when an accident victim is injured by a tortfeasor driving his or her own vehicle, verses a tortfeasor driving a rental. The Court of Appeals' decision effectively changes Utah public policy by requiring additional coverage for accident victims injured by the driver of a rental vehicle. By so doing, the Court of Appeals failed to defer to the legislature's preeminent role in regulating Utah's statutory insurance scheme. See Allen v. Prudential Property and Casualty Ins. Co., 839 P.2d 798, 804 (Utah 1992) (stating "[a]s a general matter, we are unwilling to make sweeping modifications in the public policy that underlies the regulation of the insurance industry in the absence of legislative direction. This approach is counseled by the active and preeminent role the legislative and executive branches have taken in this area.")

C. The public policy supporting the "freedom of contract" must be preserved.

Li executed a Rental Agreement with Enterprise in which Li expressly declined the option of purchasing additional indemnity protection or coverage. Specifically, Li was given the option of purchasing "Supplemental Liability Protection" from Enterprise for a nominal fee. (R. 11.) In this case, Li's estate is seeking to undo the decision Li made while he was alive to forego purchasing this additional coverage. In so doing, Li's estate seeks to contravene the public policy supporting the freedom of contract.

Li's estate acknowledges that it has recovered "other valid or collectible insurance coverage" which far exceeds the minimum statutory requirements. Li's estate contends, however, that Enterprise must provide additional coverage as a "secondary" or "excess" insurer. Li's position is fundamentally flawed because once the statutory minimum requirements are met, additional coverage is not subject to the same exclusionary limitations. That is to say, Li was free to decline additional coverage in excess of the minimum statutory requirements mandated by Title 41, Chapter 12a. See Speros v. Fricke, 2004 UT 69, n. 8 ("Contracting parties are free to limit coverage in excess of the statutory minimum requirements."); Calhoun v. State Farm Mut. Auto. Ins. Co., 2004 UT 56, P28 (same); State Farm Mut. Auto. Ins. Co. v. Mastbaum, 748 P.2d 1042, 1044 (Utah 1987) (holding an insurance policy exclusion to be valid and enforceable as to amounts and benefits in excess of statutorily mandated amounts).

Under the terms of the Rental Agreement, Li agreed that his insurance would apply and warranted to Enterprise that his insurance was adequate to meet the financial responsibility requirements imposed under Utah law. (R. 12.) Furthermore, the Rental Agreement made it clear that if there was other valid and collectible insurance coverage, there would be no excess liability indemnity protection or coverage afforded by Enterprise. (See id.)

In its brief, Li's estate ignores the fact that the minimum statutory requirements were satisfied by the "other valid or collectible insurance coverage" it received, and that the coverage it seeks to collect from Enterprise was expressly limited by the Rental Agreement Li executed. Li's estate has put forth no reason whatsoever as to why Li's decision not to purchase additional or excess coverage should not be honored.

D. The Court of Appeals' interpretation of U.C.A. § 31A-22-314 will negatively impact the rental industry and will result in customers paying twice for the same coverage.

The Court of Appeals' decision forces rental companies to provide coverage even where the customer chooses to use his or her own personal insurance to satisfy the minimum statutory requirements mandated by Title 41, Chapter 12a. If the Court of Appeals' decision is allowed to stand, there will necessarily be a negative impact on the rental industry. If rental companies are going to be required to provide indemnity protection or coverage, despite the customer's wishes to utilize his or her own insurance, the cost of the additional protection will be passed on to the customer, thereby increasing

the cost of renting a car. Rental customers will in essence be forced to pay twice for the same coverage, first to his or her personal automobile insurer, and second to the rental company.

In its brief, Li asserts that the solution to this problem is for the Court to simply clarify what liability Enterprise is required to cover. However, one need look no further than to the plain language of Utah Code Ann. § 31A-22-314 to find this clarification:

> A rental company shall provide its renters with primary coverage meeting the requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, ***unless there is other valid or collectible insurance coverage***.

U.C.A. § 31A-22-314(1). (Emphasis added.) Under the plain language of the statute, when there is "other valid or collectible insurance coverage," the rental company has no obligation to provide additional coverage. No added clarification is needed concerning a rental company's obligations under Utah Code Ann. § 31A-22-314 when the statute is read in accordance with its plain language and meaning.

CONCLUSION

Based on the foregoing, the Court of Appeals erred in determining that Utah Code Ann. § 31A-22-314 does not relieve car rental companies from providing mandatory insurance coverage, even when there is other valid or collectible insurance meeting the minimum statutory requirements. As a result, Enterprise requests that the Court of Appeals' decision be reversed and that the trial court's grant of summary judgment be affirmed.

DATED this 9th day of January, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2006, a true and correct copy of the foregoing **Reply Brief of Appellant Enterprise Rent-A-Car Company of Utah** was served by the method indicated below to the following:

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