

***Cromer v. Wilson*, 126 Nev. Adv. Op. No. 11 (Mar. 11, 2010)¹**

Tort – Effect of Criminal Conviction on Comparative Negligence

Summary

Consolidated appeals from an Eighth Judicial District Court judgment on a jury verdict in a torts action.

Disposition/Outcome

District court judgment affirmed because the appropriate result was reached despite a wrongly decided motion for summary judgment as to liability.²

Factual and Procedural History

On July 21, 2002, an intoxicated William Wilson caused severe injuries to his passenger, Aaron Cromer, when Wilson's car veered off the road and rolled over multiple times. As a result of his injuries, Cromer was rendered an incomplete quadriplegic with severe disability to his extremities. At the time of the crash, Wilson registered a blood alcohol concentration of 0.31 and had cocaine metabolite in his system. Wilson was subsequently convicted of felony DUI and felony reckless driving.

On May 5, 2003, Aaron and Felicia³ Cromer filed a complaint against Wilson alleging negligence. Wilson's answer asserted the affirmative defense of comparative negligence. The Cromers filed a motion for summary judgment, arguing that Wilson's felony conviction conclusively established his civil liability under NRS 41.133.⁴ The district court ruled against the Cromers on the summary judgment motion, concluding that Wilson was permitted to argue the comparative-negligence defense pursuant to NRS 41.141.⁵ Therefore, the Cromers had to litigate both the liability and damages issues.

The jury returned a verdict in favor of the Cromers. They found Wilson to be seventy-five percent at fault and Aaron Cromer to be twenty-five percent at fault and awarded damages for the Cromers totaling \$4,530,785.50.

¹ By Ryan McInerney.

² *See, e.g.*, *Sanchez v. Wal-Mart Stores*, 125 Nev. ___, ___ n. 2, 221 P.3d 1276, 1280 n.2 (2009) (noting that the Nevada Supreme Court will affirm a district court's order if the district court reached the correct result, even for the wrong reason).

³ Since NRS 41.133 only applies to the victim of the crime, it was not applicable to Felicia's claim.

⁴ NEV. REV. STAT. § 41.133 (2007) states that "[i]f an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury."

⁵ NEV. REV. STAT. § 41.141 (2007) states, in relevant part: "In any action to recover damages . . . injury to persons or for injury to property in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff . . . does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties to the action against whom recovery is sought."

Discussion

Standard of Review

The Nevada Supreme Court reviews a district court's order denying summary judgment de novo.⁶ Additionally, the Court reviews the construction of statutes as a question of law, which is also reviewed de novo.⁷

Application of Wilson's felony convictions to NRS 41.133

In *Langon v. Matamoros*⁸, the Court held that the legislature intended NRS 41.133 to apply to convictions for malum in se offenses.⁹ There, the Court reviewed the legislative history of NRS 41.133 and its companion provision, NRS 41.135, which enumerates the malum in se offenses that the legislature intended NRS 41.133 to cover.¹⁰ Since NRS 41.135 explicitly lists convictions for felonies as malum in se offenses, the Court concluded that Wilson's convictions for felony DUI and felony reckless driving applied to NRS 41.133.

Conflict between NRS 41.133 and NRS 41.141

The Court noted that language in NRS 41.133 does not limit or bar statutorily created defenses such as NRS 41.141. Moreover, the Court discussed the concern in *Langon* that a defendant could be insulated from liability if the jury determined that the plaintiff's comparative negligence exceeded that of the defendant,¹¹ thus thwarting the purpose of NRS 41.133 to expand the rights of victims in litigation against criminal offenders.¹² Therefore, the Court—realizing that the application of comparative negligence might negate the intended effect of NRS 41.133—attempted to give effect to both NRS 41.133 and NRS 41.141.

Reconciling NRS 41.133 with NRS 41.141

The Court determined that NRS 41.133 only establishes liability, but does not entitle a party to automatically collect damages. Although NRS 41.133 establishes a conclusive presumption of liability, the plaintiff must still establish damages. Therefore, the Court held that comparative negligence could still be applied to the present case without contradicting the language of NRS 41.133.

Conclusion

Because NRS 41.133 merely establishes conclusive evidence of liability, statutory defenses to liability, such as comparative negligence, are allowed to be argued to reduce or preclude the damages award for the plaintiff. Accordingly, the Court held that the district court should have granted Cromer's summary judgment motion as to liability. However, the Court affirmed the district court, because utilization of the incorrect procedure did not compromise an appropriate result.

⁶ *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (noting that an order denying summary judgment is not independently appealable, but the issue will be reviewed if a party properly raises the issue on appeal from the final judgment); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (using a de novo standard).

⁷ *State, Dep't of Motor Vehicles v. Lovett*, 110 Nev. 473, 476, 874 P.2d 1247, 1249 (1994).

⁸ *Langon v. Matamoros*, 121 Nev. 142, 111 P.3d 1077 (2005).

⁹ *Id.* at 144-45, 111 P.3d at 1078. A malum in se offense is "a crime or an act that is inherently immoral, such as murder, arson, or rape." BLACK'S LAW DICTIONARY 1045 (9th ed. 2009).

¹⁰ *Langon*, 121 Nev. at 145, 111 P.3d at 1078.

¹¹ *Id.* at 145, 111 P.3d at 1079.

¹² *Hearing on A.B. 268 Before the Assembly Comm. on the Judiciary*, 63rd Sess. (Nev. 1985).