2-15-1977

Bushnell v. Sapp

IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 27349

PAUL E. BUSHNELL, Plaintiff-Appellant, vs. ARTHUR NATHANIEL SAPP and THE CITY OF COLORADO SPRINGS, a Colorado Municipality, Defendants-Appellees.	Appeal from the District Court of the County of El Paso, John F. Gallagher, Judge

REPLY BRIEF OF APPELLANT

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Defendants on Page 4 on his Brief challenges the standing that this Plaintiff has to raise the constitutionality of the No-Fault Act. He asserts that only those who are directly affected by an offense of statute can challenge its constitutionality. It is submitted that the problem with the argument is that this Plaintiff is directly affected by the offensive statute in that he has had a cause of action taken away from him because of it.

It is the unreasonable and impermissible classification here of setting aside cities (licensing their Patrol Wagons) in a separate group where they are treated differently and have the option to bring themselves under the Act. (At least under the interpretation of the statute given by the trial court). Other city owned cars are under the Act.

Defendants cite Manzanares v. Bell, 241 Kansas 589 522 P. 2d 1291(1974) for the proposition that the Court need only apply one test to this type of statute, namely "is there a reasonable relationship to the legislative objective." It is submitted that the Manzanares case (page 1308) recognized that a classification must be reasonable, not arbitrary and must rest upon some ground of difference, having a fair and substantial relation to the object of the legislation, so that all persons in similar circumstances are treated alike. In the instant case, there is no reason to treat cities differently than anyone else. The Fromme dissent in Manzanares sets forth the well-studied dissertation on the matter. In his dissent, Justice Fromme disagreed with the majority with their treatment of motorcycles. Under the Kansas Statute, motorcycles were given the protection of the Act on one hand but were given the

option as to whether or not they wanted to carry the insurance. (This was a different situation than we have in the Colorado Statute where there is no protection given if the person does not come under the Act).

Are the threshold requirements of the Colorado No-Fault Act constitutional? The Defendant cites Laskey v. State Farm Insurance Company, 296 Southern2d 9(1974), a Florida case, for the proposition that the threshold of the Colorado No-Fault Statute is okay. The Laskey Court in considering the constitutionality of the Florida "threshold" stated that it seemed to them the medical expense requirements employed by the legislature bore a sufficient relationship to the seriousness of the injury in general, and therefore, to the seriousness of the ensuing pain and suffering. The proposition that there may not be a reasonable relationship between medical costs and pain and suffering was examined by the Court and disposed of by a "Straw Man" statement that the statute doesn't have to be perfect. That Court did not face the problem inherent with a threshold based upon dollar amounts, that is, what are the real differences between somebody with $500.00 worth of medicals compared with somebody with $501.00 worth of medicals with respect to their pain and suffering? Indeed, if any dollar amount is set, the result is inescapably arbitrary. It would also appear that there are serious problems with the reasonableness of the legislative objective when one considers that various doctors will charge widely varying fees for the same treatment, or one doctor is conservative and the other knife happy. If I go to a more expensive doctor, do I have more pain?

Or perhaps, maybe less? Or, indeed, is there any consistency whatever in the "threshold" proposition?

One of the appaling arguments as cited by the Defendants in Lasky is that a legitimate statute objective in No-Fault is to eliminate Court congestion by eliminating the "right." This is like eliminating hospital congestion by refusing admission to all patients with heart problems. Further, why separate out auto related Torts from the rest of the personal injury Torts?

Should Article II § 6 of the Constitution be reinterpreted? It is submitted that this section of the Constitution should be interpreted as written--Courts shall be open to every person, and a speedy remedy shall be afforded for every injury to person, property or character. There is nothing in the constitutional provision that limits this section to Courts only. It would appear that it stands for the proposition that when an individual has certain rights, the legislature cannot take them away. In our No-Fault Statute, they took just some of the rights from some of the people. There is no provision in this statute for a speedy remedy for the pain and suffering that an individual suffers when he has not spent, or wasn't able to spend, $500.00 on medicals. This is a desirable type of constitutional protection which should be afforded the people.

Respectfully submitted this 15th day of February, 1977.

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VERIFICATION OF MAILING

I declare that I am over the age of eighteen years and not a party to the above action, that my business address is Suite C, 524 South Cascade Avenue, Colorado Springs, Colorado; that I have served a copy of the attached REPLY BREIF OF APPELLANT upon the Defendant-Appellees, through their attorneys of record, whose address is:

KANE, DONLEY and WILLS
301 South Weber
Colorado Springs, Colorado 80903

and the Attorney General of the State of Colorado whose address is:

ATTORNEY GENERAL
State Capitol Building
Denver, Colorado 80202

by placing a true copy of the same in the United States mail, postage prepaid, at Colorado Springs, Colorado.

Executed this 16th day of February, 1977.

Victoria L. Claude'
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