12-9-1976

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, Colorado Honorable John F. Gallagher, Judge

BRIEF OF DEFENDANTS-APPELLEES

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STATEMENT OF THE CASE

This personal injury action was filed against an individual police officer and the City of Colorado Springs by the Plaintiff Paul E. Bushnell. The Complaint alleged that the Plaintiff sustained personal injuries as a result of the negligent operation of a police vehicle. The Defendant subsequently filed a Motion to Dismiss arguing that the Defendants came within the scope of the "Colorado Auto Accident Reparations Act" (hereafter referred to as no-fault) and that the Plaintiff did not qualify under the statutory threshhold which would allow him to bring an action against the Defendants. Plaintiff admitted to his failure of the threshhold requirement, but alleged that the Defendants did not come under no-fault and, alternatively, that if the Defendants were determined to be within the scope of no-fault, that such a statutory determination was unconstitutional.

The District Court of El Paso County, in an Order dated June 22, 1976, granted the Defendants' Motion to Dismiss. The Plaintiff appeals from that Order and requests reinstatement of the Complaint.

STATEMENT OF THE ISSUES

As set forth in the Brief of the Appellant, the Court is requested to rule upon the following questions:

1. Is the abolishment of tort liability in the "Colorado Auto Accident Reparations Act" (no-fault) unconstitutional?

2. Is the Colorado threshhold requirement of the no-fault act unconstitutional?

3. Do tort-feasors, who are not required to be covered by the no-fault act, have a statutory option to come under the act, and if they do have an option, is it unconstitutional?

SUMMARY OF THE ARGUMENT

Relying primarily on the case law of three other jurisdictions that have addressed the constitutional validity of their respective no-fault acts, as well as the policy justifications surrounding these acts in general, the Defendants respectfully argue that the Colorado no-fault act is not a form of special legislation in that the scope and boundaries of its effect are definite and uniformly applicable. In addition, the exclusions and the threshhold provisions found in the Colorado no-fault act are rational classifications and reasonably related to the legislative objective of reducing congestion in the courts, lowering insurance premiums, equalizing recoveries and increasing administrative efficiency. Finally, the provisions of the Colorado no-fault

act do not violate the right to a remedy provision found in Article II, Section 6 of the Colorado Constitution since that right is subject to legislative modification.

ARGUMENT

1. Is the abolishment of tort liability in the "Colorado Auto Accident Reparations Act" (no-fault) unconstitutional?

The Appellant argues that the interpretation of the Court of 10-4-715(1)(a), CRS'73,[1] which requires him to pursue his direct benefits under the no-fault act since the Defendant City provides benefits equivalent to those required by the statute, is unconstitutional in that it is a form of special legislation and that such an interpretation denies both due process of law and equal protection. Organizationally, these contentions will be treated in order.

In support of the allegation that this particular interpretation constitutes a form of special legislation that usurps the legislative function, the Appellant cites language

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[1] 10-4-715. No limitation on tort action against noncomplying tort-feasors. (1) Nothing in this part 7 shall be construed to limit the right to maintain an action in tort by either a provider of direct benefits under section 10-4-706(1)(b) to (1)(e) or by a person who has been injured or damaged as a result of an automobile accident against an alleged tort-feasor where such alleged tort-feasor was either: (a) Using or operating a motor vehicle not required to be covered under the provisions of this part 7, unless coverage equivalent to that required under section 10-4-706 was, at the time of occurrence of the alleged tortious conduct, actually provided for the benefit of persons for whom benefits are provided under section 10-4-707; or (b) Using or operating a motor vehicle which, although required to be covered under the provisions of this part 7, was not, at the time of the occurrence of the alleged tortious conduct, actually covered under the provisions of this part 7; or (c) Deliberately and intentionally committing a tort; or (d) Subject as a manufacturer, distributor, supplier, or repairman to a tort action arising out of product liability or product defect.

from Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956). Based on the obvious distinction between Olin Mathieson and the case at hand, Appellees contend that this argument is futile.

Olin Mathieson Chem. Corp. v. Francis (supra) is a case that involves extensive treatment and subsequent invalidation of the Colorado Fair Trade Act. The Colorado Supreme Court there held that the real objection to the Fair Trade Act was the fact that the manufacturers could dictate the actual boundaries of the law and vary the trade restraints. To delegate to the private sector the option to dictate the point at which the legislation would come into effect was correctly held to be an unlawful delegation of legislative authority. This is very different from the option that a non-covered person or entity has under the no-fault act to bring himself within the guise of the statute by providing benefits and limits in accordance with the statutory provisions. Unlike the situation in Olin Mathieson, the Appellees in this case did not have the option of setting the level of limits and benefits of the no-fault act. Their only option was whether or not to provide the limits already dictated by statute.

The Appellant also contends in his brief that the exclusions of coverage under the Colorado no-fault act is a violation of equal protection and due process in that the exclusions do not set up "rational classes" (Appellant Brief, page 4).

The first question that comes to mind in this regard is whether or not the Appellant has the requisite standing to assert a general argument of irrational statutory classifications. In Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974) the Kansas

Supreme Court dealt with various constitutional attacks on the no-fault statute enacted in that state, and subsequently upheld the statute against the attacks. The Manzanares court held that the constitutionality of governmental action can only be challenged by a person who is directly effected and such a challenge cannot be made by invoking the rights of others.

Assuming that the Appellant does have standing to challenge the statute in the manner that it has been challenged, resort can be made to several cases, like Manzanares, which deal with the constitutionality of no-fault statutes in other jurisdictions. Pinnick v. Cleary, Mass., 271 N.E.2d 592 (1971) involved the attempt of the plaintiff-driver to recover from a defendant-driver for damages allegedly incurred only two days after the effective date of the no-fault act in Massachusettes. In denying the plaintiff's claim that the no-fault act was a violation of due process, the Pinnick court noted that the overall test under the due process clause is whether the statute bears a reasonable relation to a permissible legislative objective. West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578,81 L.Ed. 703 (1936). The Court went on to articulate four areas of rational relationships which legitimate the legislative objective. These four areas included the impact of motor vehicle tort litigation on the burden of the court dockets, the high cost of auto insurance and the related inefficiencies and administrative expense, the inequities that separate lawsuits have inflicted upon individual claimants, and the delays in getting financial aid to the injured person. The court added:

> "The time spent in investigation, the time required for proof of negligence, the exaggerated claims, the all too common

> suspicion of perjured testimony, the horse and buggy approach to a twentieth century dilemna -- all of this might well have influenced the legislature, recognizing the right and need of all accident victims to single and speedy justice, toward reform." Pinnick v. Cleary (supra), at page 605.

In Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974), the Kansas Supreme Court also addressed the questions of due process and equal protection in the enactment and application of a no-fault statute. The Kansas Supreme Court held that even though the Kansas no-fault act grants motorcycle owners the option of rejecting personal injury protection benefits while requiring other owners of motor vehicles to buy first party insurance, that requirement is not arbitrary or irrational and, thus, does not deny equal protection. In addition, the Manzaneres court held that the compulsory motor vehicle liability insurance and the personal injury protection benefits required by no-fault bear a reasonable relation to a permissible legislative objective of reparation for accidental bodily injury arising out of ownership and operation of motor vehicles, and thus imposition of such requirements does not deny due process.

2. Are the threshhold requirements of the Colorado no-fault act unconstitutional?

The Appellant argues that the threshhold requirements of the Colorado no-fault act are unconstitutionally arbitrary and bear no reasonable relationship to the subject (Appellant Brief, page 5) and, thus, deny due process and equal protection. This argument is untenable in light of the legitimate objective of the legislation and the central importance of the threshhold requirements to achieving those objectives.

Laskey v. State Farm Insurance Company, Florida, 296 So.2d 9 (1974) is a case from the state of Florida which upholds, with the exception of one single provision, the no-fault provisions of that state. The Laskey court noted that in order to comply with the requirements of equal protection, statutory classifications must be reasonable and non-arbitrary, and all persons in the same class must be treated alike. "When the difference between those included in a class and those excluded from it bears a substantial relationship to the legislative purpose, the classification does not deny equal protection." The Laskey court then determined just what the legislative objective the no-fault act was perceived to be:

> "We have concluded that the legislative objectives involved here included a lessening of the congestion of the court system, a reduction in concomitant delays in court calendars, a reduction of automobile insurance premiums and an assurance that persons injured in vehicular accidents would receive some economic aid in meeting medical expenses and the like, in order not to drive them into dire financial circumstances with the possibility of swelling the public relief rolls." Lasky v. State Farm Ins. Co. (supra), at page 16.

It is crucial to note that the threshhold classifications that were upheld by Laskey were almost identical to the Colorado provisions, including those situations in which the benefits payable exceed $1,000 in medical benefits, or those situations in which the $1,000 medical expense threshhold is not reached, but either a permanent injury or death results, or those situations where neither of the other two threshholds is met but where certain listed types of injury is present.

The Kansas Supreme Court in Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974) also upheld threshhold requirements when they held that the no-fault provisions of the Kansas statute limiting recovery for nonpecuniary damages such as pain, suffering, mental anguish, and inconvenience to persons injured in motor vehicle accidents having medical expenses in excess of reasonable value of $500 or more, or specified injuries enumerated in the act, bear a rational relationship to legislative objective of insuring prompt compensation to such injured persons, thus, such provisions are not arbitrary or unreasonable and do not deny equal protection.

3. Do tort-feasors who are not required to be covered by the no-fault act have a statutory option to come under the act, and if they do have an option, is it unconstitutional?

Although the language of the question presented to the Court is not entirely clear, the Appellant argues in this section of his brief that the no-fault act itself, insofar as it eliminates actions for damages for bodily injury caused by a motor vehicle should be ruled unconstitutional because it violates Article II, Section 6 of the Constitution of the State of Colorado which provides:

> "That courts of justice shall be open to every person and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay."

Appellant readily admits that this clause has been generally interpreted in Colorado as a prohibition against the judiciary and not the legislative branches of government. (Appellant Brief, page 7) The cases from other jurisdictions

that have dealt with the question of the constitutionality of a no-fault statute have also dealt with contentions made in this regard, and each of them upheld the statute on this particular ground. In Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974) the Kansas Supreme Court held that in spite of a similar provision in the state constitution of Kansas, such a provision does not forbid creation of new rights or abolition of rights recognized by common law. It went on to hold that vested rights contained in the constitutional provision are subject to change by legislative power where the change is reasonably necessary in the public interest to promote general welfare of people of the state. Similarly, in Pinnick v. Cleary, Mass., 271 N.E.2d 592 (1971) the Massachusettes Court held that "no person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit", citing New York Cent. R.R. v. White, 243 U.S. 188, 198 S.Ct. 247, 61 L.Ed 667 (1916). The Pinnick Court also noted that legislative actions based on this principle are common that both modify and abrogate common law causes of action. The citizen was there held to have no cause of action solely because his rights are not now what they would have been before. Finally, the Florida Supreme Court, in Lasky v. State Farm Ins. Co., Florida, 290 So.2d 9 (1974) held:

> "In exchange for the loss of a former right to recover -- upon proving the other party to be at fault -- for pain and suffering, etc., in cases where the threshholds of the statute are not met, the injured party is assured a speedy payment of his medical bills and compensation for lost income from his own insurer, even where the injured party was himself clearly at fault... The provisions of (Florida no-fault act) do provide a reasonable alternative to the traditional action in tort, and therefore

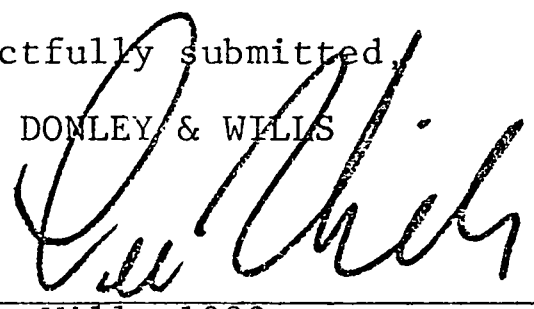
do not violate the right of access to the courts guaranteed by Art. I § 21, Fla. Const." Lasky v. State Farm Ins. Co. (supra) at page 15.

CONCLUSION

The Appellees respectfully request that the Court affirm the judgment of the trial court.

Respectfully submitted,

KANE, DONLEY & WILLS

By 

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