STATE OF MINNESOTA

IN SUPREME COURT

A18-0143

Court of Appeals — Lillehaug, J.

Frederick S. Fish,

Respondent,

vs.

Filed: November 27, 2019
Office of Appellate Courts

Ramler Trucking, Inc.,

Appellant,

and

Wells Concrete Products Company
and Albany Manufacturing, Inc.,

Third-Party Defendants.

Scott Wilson, Scott Wilson Law Firm, PLLC, Minneapolis, Minnesota; and

Michel Steven Krug, Krug & Zupke, P.C., Saint Paul, Minnesota, for respondent.

Teri E. Bentson, Law Offices of Thomas P. Stilp, Golden Valley, Minnesota, for appellant.

Daniel J. Cragg, Eckland & Blando LLP, Minneapolis, Minnesota, for amicus curiae Minnesota Association for Justice.

Lance D. Meyer, Dale O. Thornsjo, O'Meara, Leer, Wagner & Kohl, P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Defense Lawyers Association.

S Y L L A B U S

Because an employer immune from tort liability under the Workers' Compensation Act is not a person "severally liable" under Minn. Stat. § 604.02, subd. 1 (2018), a third-party tortfeasor's liability to an injured employee for a workplace injury is not reduced by the employer's fault.

Affirmed.

O P I N I O N

LILLEHAUG, Justice.

In a line of decisions going back almost sixty years, we have held that an employer liable to an injured employee under the Workers' Compensation Act, and a third party liable in tort to that same employee, do not have common liability, whether joint or several. In this case, we consider whether the 2003 amendment to Minnesota Statutes section 604.02, subdivision 1 (2018), overturned that line of decisions and thereby made an employer and a third-party tortfeasor "severally liable" for a workplace injury. If so, a third-party tortfeasor's liability to the injured employee would be reduced by the employer's fault. We conclude that, by the plain words of section 604.02, a tortfeasor's liability to an injured employee is not reduced by the employer's fault. Accordingly, we affirm the decision of the court of appeals.

FACTS

This case arises out of an employee's workplace injury. Respondent Frederick Fish was an employee of Albany Manufacturing, Inc. and Wells Concrete Product Company (collectively, Fish's employer). On December 17, 2012, Fish was working on a semi-trailer

platform, helping to load an oversized concrete beam. In response to hand directions from Fish's coworkers, the truck driver began to move the truck and trailer forward. Fish jumped off the moving trailer platform and was injured. The truck driver was an employee of appellant Ramler Trucking, Inc.

Fish and his employer settled Fish's workers' compensation claim. Fish then brought a common-law negligence claim against Ramler, which in turn brought a third-party contribution claim against Fish's employer. Ramler and the employer settled the contribution claim and the employer's possible subrogation claim.

Fish's lawsuit against Ramler proceeded to trial. Having settled with both Fish and Ramler, Fish's employer did not participate in the trial. The special verdict form directed the jury to allocate fault among all persons involved, including the non-party employer. The jury found that the injury was caused by Fish, his employer, and Ramler, and allocated fault as follows: 5 percent to Fish; 75 percent to the employer; and 20 percent to Ramler.

Post-trial, Ramler, citing Minn. Stat. § 604.02, subd. 1, argued that its liability to Fish should be proportionate to its 20 percent fault. In other words, Ramler's tort liability would be reduced, not just by Fish's 5 percent fault, but also by the employer's 75 percent fault.

Fish countered that, by its plain language, section 604.02 did not apply because Ramler and Fish's employer were not both "severally liable." Employers, Fish argued, are shielded from tort liability by the Workers' Compensation Act. Absent two or more severally liable parties, Fish contended, Ramler is liable to Fish for the full damage award,

reduced only by Fish's 5 percent contributory fault and any damages duplicative of workers' compensation benefits awarded to Fish.

The district court agreed with Ramler and applied section 604.02 to reduce the net damage award by an amount proportionate to the employer's fault. The court of appeals reversed, concluding that it was error to apply section 604.02 in these circumstances, and remanded to the district court for recalculation of the judgment. *Fish v. Ramler Trucking, Inc.*, 923 N.W.2d 337, 342–44 (Minn. App. 2019). We granted Ramler's petition for review.

ANALYSIS

Whether section 604.02, subdivision 1, applies to limit Ramler's liability to Fish is a question of statutory interpretation. Statutory interpretation presents a question of law, which we review de novo. *Bruton v. Smithfield Foods, Inc.*, 923 N.W.2d 661, 664 (Minn. 2019). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). If the intent is clear, we apply the statute according to its plain meaning. *State v. Rick*, 835 N.W.2d 478, 482 (Minn. 2013).

Minnesota Statutes section 604.02, subdivision 1, governs damage apportionment in civil negligence actions. As amended in 2003, section 604.02 reads in relevant part:

> **Subdivision 1. Joint liability.** When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

> (1) a person whose fault is greater than 50 percent;
> (2) two or more persons who act in a common scheme or plan that results in injury;
> (3) a person who commits an intentional tort; or
> (4) a person whose liability arises under [a variety of environmental and public health laws].

Minn. Stat. § 604.02, subd. 1.

Ramler argues that section 604.02, subdivision 1, limits a third party's liability to an amount proportionate to its fault when (a) a third party and an employer are both at fault for a workplace injury, and (b) the third party's fault is not greater than 50 percent. Fish disagrees and argues that, because an employer and a third-party tortfeasor are not severally liable persons, section 604.02, subdivison 1, is not triggered and Ramler's liability is not limited to the 20 percent fault assigned to Ramler by the jury.

The direction in section 604.02, subdivision 1 to apportion liability according to fault is triggered only when "two or more persons are severally liable." Several liability is "liability that is separate and distinct from another's liability," so that a severally liable person is responsible only for his or her equitable share of damages. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 74 (Minn. 2012) (quoting *Several Liability*, *Black's Law Dictionary* (9th ed. 2009)). To determine whether an employer and a third party are severally liable for an injury and section 604.02 is triggered thereby, a short review of our case law and relevant statutes at the intersection of the workers' compensation and tort systems is necessary.

At common law, when two or more negligent persons caused an injury, the persons were "jointly and severally liable." *Maday v. Yellow Taxi Co. of Minneapolis*, 311 N.W.2d

849, 850 (Minn. 1981) ("It has always been the [common-law rule] of this state that parties whose negligence concurs to cause injury are jointly and severally liable although not acting in concert."). When two or more persons were jointly and severally liable, "a plaintiff [could] bring an action to hold any or all of the jointly and severally liable tortfeasors liable for the entire harm." *Staab*, 813 N.W.2d at 74. It made no difference whether the injury arose inside or outside the workplace. *See, e.g.*, *Pelowski v. J.R. Watkins Med. Co.*, 139 N.W. 289, 292 (Minn. 1912) ("[I]f the negligence of both [the employer] and the stonesetters concurred as the proximate cause of [the employee's] death, a recovery could be had."); *Coleman v. Minneapolis St. Ry. Co.*, 129 N.W. 762, 763 (Minn. 1911) (holding that where an employee was injured by the concurrent negligence of his employer and a third party, he was entitled to recover damages against both defendants).

That changed with the passage of the Workers' Compensation Act in 1913. The Act established a statutory alternative to common-law tort liability for workplace injuries, elective at the option of employers and their employees. In 1937, the Act was amended to make statutory liability mandatory and exclusive, thereby immunizing employers from common-law tort liability. Minnesota Statutes section 176.04 (1941)—now codified at Minnesota Statutes section 176.031 (2018)—provided that an employer's liability under the Act was "exclusive and in the place of any other liability." This exclusivity provision meant that an employee injured in the workplace could not bring a common-law negligence action against an employer, and the employee's recovery against the employer was limited to workers' compensation benefits regardless of fault. The exclusivity did not, however,

alter an employee's ability to bring a common-law negligence action against a third-party tortfeasor.

The establishment of two separate remedies for workplace injury—workers' compensation and tort—raised the question of the relationship between these systems. The Workers' Compensation Act provided that an employer could recover in subrogation from the tortfeasor. *See* Minn. Gen. Stat. § 8229 (1913). But the Act was silent on whether a tortfeasor could recover in contribution from an employer.

In answering that question through several cases, we identified the precise nature of the legal relationship between an employer and a third-party tortfeasor. Our leading case was *Hendrickson v. Minnesota Power & Light Co.*, 104 N.W.2d 843 (Minn. 1960), *overruled in part on other grounds by Tolbert v. Gerber Indus., Inc.*, 255 N.W.2d 362 (Minn. 1977). In *Hendrickson*, a third-party tortfeasor sued by an employee for a workplace injury sought contribution from an at-fault employer. We held that contribution was not available. 104 N.W.2d at 849.

In denying contribution to the third party, we discussed the black-letter common law of tort liability. We noted that contribution requires "common liability," which exists when two or more tortfeasors jointly or concurrently cause the injury. *Id.* at 847, 849.[1]

[1] Put another way, common liability "exists when two or more actors are liable to an injured party for the same damages." *Farmers Ins. Exch. v. Vill. of Hewitt*, 143 N.W.2d 230, 233 (Minn. 1966); *see also Waldref v. Dow*, 214 N.W. 767, 768 (Minn. 1927) (explaining that contribution is based on "common liability," which includes two persons "jointly, or jointly and severally, bound to pay a sum of money"); *Gugisberg v. Eckert*, 111 N.W. 945, 946 (Minn. 1907). Indeed, common liability "is the very essence of an action for 'contribution'." *Koenigs v. Travis*, 75 N.W.2d 478, 483 (Minn. 1956).

But, because of the Workers' Compensation Act's exclusivity provision, we said, when the concurrent acts or omissions of a third party and an *employer* cause injury, there is no common liability. Because of the Act, the employer is "immune from action with respect to such tort." *Id.* at 847. Thus, "there is no common liability involving the employer and third party in such situations; and, therefore, there [are] no grounds for allowing contribution." *Id.* at 849. The result of *Hendrickson* was that third-party tortfeasors were liable for the full damage award, and had no right of contribution from the immune employer, regardless of the employer's fault.

In *Lambertson v. Cincinnati Welding Corp.*, we reaffirmed *Hendrickson*'s holding that there was no common liability between an employer and a third-party tortfeasor. 257 N.W.2d 679, 688 (Minn. 1977) ("[T]here is no common liability to the employee in tort . . . ."). Recognizing the injustice for third-party tortfeasors, however, we established a common-law equitable right of contribution. *Id*. *Lambertson* allowed a third-party tortfeasor to receive contribution from an employer up to the employer's percentage of fault, but the contribution amount could not exceed the workers' compensation benefits payable. *Id*. at 689.

Since our decisions in *Hendrickson* and *Lambertson*, we have strictly adhered to the conceptual framework that an employer and a third-party tortfeasor do not share common liability, but that the tortfeasor has a limited common-law right to contribution.[2] Thus, in

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[2] Although *Lambertson* indicated that common liability may be an "outworn technical concept[]" when it comes to fashioning a "flexible, equitable remedy" like contribution, 257 N.W.2d at 688, we did not do away with the doctrine of common liability. *See, e.g.*, *Horton by Horton v. Orbeth, Inc.*, 342 N.W.2d 112, 114–15 (Minn. 1984) (noting that

Johnson v. Raske Building Systems, Inc., we explained the "correct procedure for apportionment" for the equitable contribution right recognized in *Lambertson*. 276 N.W.2d 79, 81 (Minn. 1979). First, the third-party tortfeasor pays the entire verdict, which is the full damage award reduced by the plaintiff's percentage of fault under Minn. Stat. § 604.01 (2018);[3] second, the employer contributes to the third-party tortfeasor an amount that represents the lesser of its percentage of negligence or the workers' compensation benefits payable; and, third, the employee reimburses the employer for workers' compensation benefits paid, under Minn. Stat. § 176.061, subd. 6(c) (2018) (the subrogation right). 276 N.W.2d at 81. As we explained: "Where the employer who has paid workers' compensation benefits and a third party are both negligent, the apportionment of damages is controlled by Minn. [Stat §] 176.061, subd. 6, and our decision in *Lambertson* . . . ." *Id.* at 80; *see also Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 157 (Minn. 1982) (stating that a special verdict allocating fault to an employer has no application outside of contribution because an employee cannot recover from an employer regardless of fault).

"*Lambertson* . . . and its progeny do not stand as authority for the proposition that common liability is no longer relevant").

[3] The comparative fault provision states that a plaintiff can recover if the plaintiff's fault "was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the [plaintiff]." Minn. Stat. § 604.01, subd. 1. Here, the district court applied Minn. Stat. § 604.01 in submitting the verdict form to the jury, and that decision is not at issue in this appeal. The jury found Fish to be 5 percent at fault, and the district court correctly reduced his damage award accordingly.

Perhaps the case in which we have spoken most plainly about the separation of the workers' compensation system and the tort system is *Kempa v. E.W. Coons Co.*, 370 N.W.2d 414 (Minn. 1985). We made clear that statutory damage apportionment, as found in then-current section 604.02, did not govern contribution or subrogation in workplace injury cases. *Id.* at 420. We also made clear that a third-party tortfeasor and an employer "are neither jointly liable nor jointly and severally liable" to the employee. *Id.*

In 2000, the Legislature codified *Lambertson* and its progeny as Minn. Stat. § 176.061, with only slight modifications. Subdivision 11 of that statute provides that a liable third-party tortfeasor has a right of contribution against the employer in an amount proportional to the employer's percentage of fault with certain limitations. Subdivision 11 presumes that a third party must pay more than its share of fault, but provides that this disproportion may be offset, to some extent, by contribution from the employer.

With our precedent and the statute codifying our precedent in mind, we turn now to Ramler's contention—that the 2003 amendment to section 604.02, subdivision 1, limits an injured employee's award against the tortfeasor to the tortfeasor's percentage of fault when the employer is also at fault and the tortfeasor's fault is not greater than 50 percent. The 2003 amendment made "several liability," rather than "joint liability," the default in tort cases. Ramler argues that nonparties—such as employers—are severally liable persons because, as we said in *Staab*, several liability is determined at the time a tort occurs. 813 N.W.2d at 75. Ramler's theory is that both Ramler and the employer were liable at the moment the tort occurred in this case—in other words, when Fish was injured.

We are not persuaded. The plain words of section 604.02, subdivision 1, require that, for the statute to be triggered, persons must be "severally liable." As we made clear in *Hendrickson*, *Lambertson*, and *Kempa*, employers liable in workers' compensation and third parties liable in tort are not commonly liable, either jointly or severally, because the employer is shielded from tort liability. *See Kempa*, 370 N.W.2d at 420.[4] *Staab* did not overrule this long-standing precedent and said nothing about employer liability. After all, *Staab* involved an accident at a place of worship, not a place of work.[5]

Further, the text of the rest of section 604.02 tells us that the phrase "severally liable" does not include employers. *See Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398, 402 (Minn. 2019) (stating that we will read a statute in context to "determine whether a statute's meaning is plain"). If Ramler were correct, a severally liable employer would become a person "jointly and severally liable for the whole award" in tort if its fault were greater than 50 percent. *See* Minn. Stat. § 604.02, subd. 1. And, if the third-party tortfeasor's share turned out to be uncollectible, by reallocation the employer could be yet further liable. *See id.*, subd. 2 (2018). Ramler's interpretation would take a sledgehammer to the Workers' Compensation Act's tort immunity for employers, a cornerstone in the

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[4] As *Staab* recognized, "several liability is a component of joint and several liability. It is not logically possible for a tortfeasor to be jointly and severally liable without being severally liable." 813 N.W.2d at 74 n.3. Thus, the change in section 604.02, subdivision 1, from joint and several liability to several liability did not work a substantial change to common-law common liability.

[5] A single case from the District of Minnesota has opined that *Staab* changed Minnesota law to require the use of section 604.02 in workplace injury cases. *See Gaudreault v. Elite Line Servs., LLC*, 22 F. Supp. 3d 966, 981 (D. Minn. 2014). With respect, we do not find the federal court's reasoning persuasive.

Act's foundation. That cannot be what the Legislature intended when it amended section 604.02.

Accordingly, in this case, Ramler's liability to Fish is not reduced by the fault of Fish's employer.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.