

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HB 1185

Wednesday, January 20, 2021
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HB 1185 is intended to “fix” an apparent unintended consequence contained in the original statute, N.D.C.C. § 39-06-09. Specifically, the amendment is designed to prevent a situation where an injured party (i.e., the individual who signed the application for the minor’s operating license) is prevented from recovering damages related to the minor’s negligence. Although this is a very rare and unique situation, it occurred to one of my clients.

As it currently exists, N.D.C.C. § 39-06-09 imputes the negligence of a minor to the individual who has signed the application for the minor’s operator’s license. The statute is understandably intended to extend financial responsibility for the minor’s negligence beyond the minor, presumably to his/her parent or legal guardian. However, the statute prevents any recovery if the individual who signed the operator’s license application is the injured party, typically as a passenger in the vehicle operated by the minor.

The apparent flaw in the statute was raised by the North Dakota Supreme Court in Anderson v. Anderson ex. rel. Anderson, 591 N.W.2d 138 (N.D. 1991). In that case, Toni Anderson (Derrik Anderson’s mom) was injured while riding as a passenger in a vehicle driven by her 14 year old son, Derrik. At the time of the accident, Derrik was operating the vehicle with an instructional permit issued upon an application signed by Toni. Following the accident, Toni filed an injury claim against the family’s liability insurance company, Milbank Mutual, for her injuries and damages.

The issue in the Anderson case was whether the negligence of the minor driver (Derrick) was imputed to the injured passenger (Toni) under N.D.C.C. § 39-06-09, when the injured passenger (Toni) is the parent who signed the minor's driver's application for the instructional permit. The Anderson court, in a split decision, ruled that the parent (Toni) was unable to make a claim for her injuries based upon N.D.C.C. § 39-06-09. In arriving at its decision, the Anderson court stated:

We believe the plain language of N.D.C.C. § 39-06-09 imputes Derrick Anderson's negligence to his mother, Toni Anderson. ... Section 39-06-09, N.D.C.C., specifically provides that "*any negligence* of a minor...must be imputed to the person who has signed the application of such minor for a permit or license..." (emphasis added). Not only does the statute include the words "any negligence," but the statute does not contain any language limiting its scope.

Id. at 140. As part of its analysis, the Anderson court acknowledged that other jurisdictions ruled that similar statutes do not impute the negligence of a minor to the parent or guardian who signed the license/permit application. (The Anderson court referenced "persuasive policy arguments on both sides of the issue.") However, the Anderson court stated:

Under the circumstances of this case, we need not decide which line of authority is the most persuasive because, by its terms, N.D.C.C. § 39-06-09 requires the imputation of all negligence, not solely financial liability, to the signing parent or guardian. Despite Toni Anderson's urging, we follow the line of cases imputing only financial responsibility, our established rules of statutory interpretation require we not go beyond the expressed language of the statute where the legislature's intent is clear from the face of the statute.

Accordingly, we conclude the plain language of N.D.C.C. § 39-06-09 requires Derrick Anderson's negligence be imputed to his mother, Toni Anderson, who signed the permit application, barring her claim for injuries sustained in the accident. (Emphasis added).

Id. at 140.

In a later case involving an insurance policy issued to divorced parents, the North Dakota Supreme Court in State Far Mut. Auto. Ins. Co. v. Gruebele, 846 N.W.2d 745 (N.D.

2014), reaffirmed the ruling in the Anderson case. Id. at 748. In Gruebele, the mother signed the minor's driver's license application and assumed financial responsibility for the minor's negligent acts arising from the language set forth in N.D.C.C. § 39-06-08 and 39-06-09. Id. The Gruebele court stated:

Under North Dakota's statutory structure **(which we invite the legislature to examine)**, negligence imputed to a parent after signing their minor child's driver's license application sponsorship form is a separate consideration than the scope of coverage under the signing parent's insurance contract. (Emphasis added.)

Id. at 751.

Based upon the applicable statutes and case law, it appears it would be impossible for a parent to make a claim against his/her child if the injured parent signed the application for the minor's driver's license. (Specifically, any negligence of the minor driving a motor vehicle is imputed to the parent who signed the minor's application for the driver's license.) In the context of a wrongful death case, because a parent cannot make a negligence claim against him/herself and the negligence of the parent is attributed to the parent's representative, the statute appears to preclude a surviving spouse from making a successful claim. That is what happened in my client's case.

The practical consequence of the existing law resulted in my client being prevented from recovering any damages for the death of her husband, either for her benefit or the benefit of their children. (On the other hand, the occupants of the other vehicle involved in the collision collected \$2,500,000 in compensation for their injuries and wrongful death claims.) The legislature can address this apparent unintended consequence by adopting the language contained in HB 1185.