North Dakota Law Review

Volume 33 | Number 3 Article 10

1957

Process - Service upon Nonresident Motorist - Interpretation of Applicable Statute

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should not be prohibited unless it is contrary to good morals or against public policy. There is difficulty in discerning the difference between advertising the business of the occupier or the business of another; it may be a distinction without a difference. It is not the letter, word or model that endangers the public; it is the structure upon which it is attached that may be dangerous.[25] The ordinance in the instant case permits one type of advertising and forbids another; it does not promote the public health, safety, morals and welfare and it does not remedy an existing evil.[26]

JOHN M. ORBAN.

PROCESS — SERVICE UPON NONRESIDENT MOTORIST — INTERPRETATION OF APPLICABLE STATUTE. — A filling station attendant brought an action against a nonresident motorist to recover for scalds and burns suffered while servicing the motorist's automobile at a gasoline service station. The Circuit Court of Arkansas entered an order sustaining motion to quash service and the attendant appealed. The Supreme Court of Arkansas *held,* that the nonresident motorist was not amenable to substituted service of process in the state under the Nonresident Motorist Statute[1] since the alleged cause of action arose out of an accident which occurred upon private property and not upon the public highway as the statute expressly requires.[2] *Langley v. Bunn,* 284 S.W.2d 319 (Ark. 1955).

The constitutionality of states' regulation of nonresident motorists as a police power has long been decided and is not an issue in this case.[3] The issue is the interpretation of the wording of the statutes by the courts. Nonresident service statutes have been interpreted both strictly[4] and liberally.[5] However the majority of courts have

25. People *ex rel.* Wineburgh Advertising Co. v. Murphy, 195 N.Y. 126, 88 N.E. 17 (1909).

26. People v. Wolf, 127 Misc. 382, N.Y.S. (Nassau County Ct. 1926) (ordinance that prohibited signboards on vacant lots except to advertise the sale of such lot held invalid.).

1. Ark. Stat. Ann., § 27-342.1 (1955) "The acceptance by a nonresident owner of the rights and privileges to drive or operate a motor vehicle upon the public highway of this State shall be deemed equivalent to the appointment of the Secretary of the State of Arkansas to be the true and lawful attorney and agent of such nonresident upon whom may be served all lawful process in any action growing out of accident or collision in which said nonresident may be involved while operating a motor vehicle on such highway."

2. Ark. Stat. Ann., § 27-341.1 (1953) "Any public highway within the borders of the State of Arkansas including byways, county highways, State highways, roads or highways in national parks and roads or highways in military reservations whether used conditionally or unconditionally by the public."

3. Wuchter v. Pizzutti, 276 U.S. 13; Kelso v. Bush, 191 Ark. 1044, 89 S.W.2d 594 (1936); Pawloski v. Hess, 253 Mass. 478, 144 N.E. 760 (1924).

4. Kelley v. Koetting, 164 Kan. 542, 190 P.2d 361 (1948).

5. Gallagher v. Dist. Court of 6th Judicial Dict., 112 Mont. 253, 114 P.2d 1047 (1941).

taken the former approach feeling bound by the principle that the statutes are in derogation of the common law and are to be strictly construed.[6] With this view in mind it has been held that the statutes could not constitutionally apply to accidents which did not arise from the use of the highway.[7] Thus accidents which have occurred upon a private driveway,[8] on the grounds of a filling station,[9] in a privately owned garage,[10] in a grain field adjoining a road,[11] or on the parking lot of a night club,[12] have all been held to bar the resident from obtaining service of process on the nonresident motorist. Jurisdictions favoring liberal construction theorize that strict construction of such narrow provisions as found in these statutes defeats the intent of the legislature,[13] and that ordinary stops incident to the operation of a motor vehicle upon the highway should not bar application of the Nonresident Motorist Statute.[14] Several states having such statutes have allowed recovery when the accident did not occur upon the highway of the state.[15]

Although in the instant case the Arkansas court has adhered to its adoption of strict construction of the Nonresident Motorists Statute,[16] there is a growing tendency for courts to hold the opposite.[17] North Dakota has amended its applicable statute so that it now provides for service upon the nonresident whether the accident occurs on a public highway or upon public or private property.[18] This more explicit statute obviates the necessity of reading into the statute the intent of the enacting legislature and lessens the possibility of a court conflict such as appears in the instant case.

Nonresident motorist statutes having provisions similar to the

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6. Kelley v. Koetting, 164 Kan. 542, 190 P.2d 361 (1948); Brown v. Cleveland Tractor Co., 265 Mich. 475, 251 N.W. 557 (1933).

7. Finn v. Schreiber, 35 F. Supp. 638 (W. D. N. Y. 1940); Brauer Machine and Supply Co. v. Parkhill Truck Co., 383 Ill. 569, 50 N.E.2d 836 (1943) ("It makes no difference where the injury actually occurs if it may be attributed to the use of the highway and naturally flows therefrom.").

8. Zulenski v. Lyford, 175 Misc. 202, 22 N. Y. S.2d 489 (Sup. Ct. 1940).

9. Finn v. Schreiber, 35 F. Supp. 638, (W. D. N. Y. 1940).

10. Haughey v. Minneola Garage, Inc., 174 Misc. 332, 20 N. Y. S.2d 857 (Sup. Ct. 1940).

11. Kelley v. Koetting, 164 Kan. 542, 190 P.2d 361 (1948).

12. Harris v. Hanson, 75 F. Supp. 481 (S. D. Idaho 1948).

13. Gallagher v. Dist. Court of 6th Judicial Dist., 112 Mont. 253, 114 P.2d 1047 (1941); Sipe v. Moyers, 353 Pa. 75, 44 A.2d 263, 264 (1945) (dictum).

14. McDonald v. Superior Court, 43 Cal.2d 621, 275 P.2d 464 (1954) (Normal operation of a vehicle includes more than its movements over the highway).

15. See, *e. g.*, Paduchik v. Mikoff, 158 Ohio St. 533, 110 N.E.2d 562 (1953) (Accident occurring in farmyard); Sipe v. Moyers, 353 Pa. 75, 44 A.2d 263 (1945) (Accident occurring upon business premises); Bertrand v. Wilds, 281 S.W.2d 390 (Tenn. 1955) (Accident occurring upon the driveway of veterans hospital).

16. Kerr v. Greenstein, 213 Ark. 447, 212 S.W.2d 1 (1948).

17. See Schefke v. Superior Court of San Francisco, 289 P.2d 542 (Cal. 1955); Gallagher v. Dist. Court of 6th Judicial Dict., 112 Mont. 253, 114 P.2d 1047 (1941).

18. N.D. Rev. Code, § 26-0611 (Supp. 1953); N.D. Sess. Laws 1951, c. 202 § 1. *Cf.*, N. D. Rev. Code § 28-0611 (1943).

one in the instant case appear to have created an artificial and unreasonable distinction. This distinction has caused most states to hold that the provisions of the statutes cannot constitutionally extend to accidents involving nonresidents, who after having entered the state proceed onto private or other public property and there cause injury to another.

This case illustrates the importance of careful drafting of the Nonresident Motorist Statue. To restrict the inherent danger of a motor vehicle solely to the highway as was done in this case denies the resident proper protection and seems to defeat the intent of the lawmakers.

RONALD SPLITT.

WORKMEN'S COMPENSATION — INJURIES ARISING "OUT OF" EMPLOYMENT — RIGHT OF TRAVELING EMPLOYEE TO COMPENSATION. — Decedent and a female companion died in a hotel fire caused by the careless smoking of one or both of the parties. Decedent had been traveling on the business of his employer. The petitioners, decedent's wife and minor daughter, filed a claim under the California Workmen's Compensation Act which was denied by the state Industrial Accident Commission. The California Supreme Court, two justices dissenting, *held* that the death arose out of and in the course of employment and thus was compensable under the act. *Wiseman v. Industrial Accident Commission*, 46 Cal.2d 570, 297 P.2d 649 (1956).

The courts generally agree that the provisions of the Workmen's Compensation Acts should be given broad construction,[1] and reasonable doubts resolved in favor of the employee.[2] Recovery is limited to injuries arising out of and in the course of employment.[3] The former relates to a causal connection between the accident and the employment, and the latter refers to the "time, place, and circumstances" of the accident.[4]

1. *E. g.*, Desautel v. North Dakota Workmen's Compensation Bureau, 72 N. D. 35, 38, 4 N.W.2d 581, 583 (1942) (dictum).

2. *E. g.*, Truck Ins. Exchange v. Industrial Acc. Comm'n., 27 Cal.2d 813, 167 P.2d 705, 706 (1946) (dictum); Smith v. University of Idaho, 67 Idaho 22, 170 P.2d 404, 406 (1946) (dictum).

3. 6 Schneider, *Workmen's Compensation* § 1542 (3rd ed. 1948). Forty-one states have statutes containing both phrases. N. Dak., Penn., Texas, and Wash. statutes contain only "in the course of". N. D. Rev. Code § 65-0102, 8 (Supp. 1953) " 'Injury' shall mean only an injury arising in the course of employment." N. Dak. law contains no other equivalent of "arising out of" the employment as regards accidental injuries and only the single element must be found to award recovery. Lippman v. North Dakota Workmen's Compensation Bureau, 79 N. D. 248, 55 N.W.2d 453 (1952).

4. *E.g.*, Lippman v. North Dakota Workmen's Compensation Bureau, 79 N.D. 248, 252, 55 N.W.2d 453, 458 (1952) (dictum).