

12-1-2016

## Kaplan v. Dutra, 132 Nev. Adv. Op. No. 80 (Dec. 1, 2016) (en banc)

Hayley Cummings  
*Nevada Law Journal*

Follow this and additional works at: <http://scholars.law.unlv.edu/nvscs>



Part of the [Bankruptcy Law Commons](#)

---

### Recommended Citation

Cummings, Hayley, "Kaplan v. Dutra, 132 Nev. Adv. Op. No. 80 (Dec. 1, 2016) (en banc)" (2016). *Nevada Supreme Court Summaries*. Paper 1016.

<http://scholars.law.unlv.edu/nvscs/1016>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [david.mcclure@unlv.edu](mailto:david.mcclure@unlv.edu).

## BANKRUPTCY: PERSONAL INJURY EXEMPTIONS

### **Summary**

The Court, sitting *en banc*, reviewed a certified question from the United States Bankruptcy Court, determining that under NRS 21.010(1)(u) a debtor is entitled to a personal injury exemption of \$16,150 for each personal injury claim.

### **Background**

Prior to filing for bankruptcy, David Kaplan received settlements from two personal injury cases. Upon filing for bankruptcy, under NRS 21.090(1)(u), Kaplan claimed two personal injury exemptions, one for each settlement he had received.

In response to Kaplan's multiple personal injury exemptions, Allan Dutra, the Chapter 7 trustee, filed an objection. The bankruptcy court then certified a question to the Nevada Supreme Court concerning whether NRS 21.090(1)(u) entitled a debtor to more than one personal injury exemption if a debtor experienced more than one personal injury incident.

### **Discussion**

Pursuant to NRAP 5(a), the Nevada Supreme Court "may answer questions of law certified to it by federal courts."<sup>2</sup> However, the Nevada Supreme Court may only do so if the answer may determine part of the federal case, controlling Nevada precedent does not exist, and answering clarifies a critical question of law.<sup>3</sup> Here, the Court determined that the bankruptcy court's question would answer a determinative part of the case, Nevada precedent regarding the matter did not exist, and answering would settle an important question of law regarding NRS 21.090(1)(u). To determine the statute's meaning, the Court looked to legislative intent, along with meaning and public policy.

#### *NRS 21.090(1)(u) is ambiguous*

The terms "payments" and "personal injury" both create ambiguity because they both have more than one reasonable interpretation. For example, "payments" may refer to multiple personal injury payments resulting from aggregated multiple personal injury claims, which would limit NRS 21.090(1)(u)'s personal injury exemption to \$16,500, regardless of the number of incidents. In contrast, "payments" may also refer to multiple independent payments received for independent incidents, which would allow for multiple exemptions totaling \$16,500 each. To clear the foregoing ambiguity, the Court turned to legislative intent.

#### *NRS 21.090(1)(u) provides for multiple personal injury exemptions, on a per-claim basis*

---

<sup>1</sup> By Hayley J. Cummings.

<sup>2</sup> *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007).

<sup>3</sup> *Id.*

The legislative intent concerning NRS 21.090(1)(u) fails to create clarity. During the seventy-second regular session, the Nevada State Legislature amended NRS 21.090 to add the personal injury exemption. Without sufficient legislative history evidence to determine intent, the Court evaluated reason and public policy.

Reason and public policy demonstrate that courts should read NRS 21.090(1)(u) to include “multiple personal injury exemptions on a per-claim basis.”<sup>4</sup> Because exemption statutes are in place to secure a debtor’s livelihood, the courts should “liberally and beneficially” interpret such statutes in the debtor’s favor.<sup>5</sup>

Moreover, the legislature elaborated on the statute’s policy by stating that the statute’s purpose was to provide an injured individual with the basic funds necessary for recovery.<sup>6</sup> By extension, limiting the exemption to \$16,500, regardless of the number of injuries sustained, frustrates the statute’s purpose. As more injuries likely lead to a higher cost of recovery, NRS 21.090(1)(u) must provide for multiple exemptions.

### *Split of authority*

Though the Nevada Supreme Court bases its opinion on Nevada law and NRS 21.090(1)(u)’s legislative history, a split of authority exists at a federal level. While 1 U.S.C. § 522(d)(11)(D) provides for a personal injury exemption in federal bankruptcy cases, federal courts are split on whether the statute requires a debtor to one aggregated exemption or multiple per-claim exemptions. The Nevada Supreme Court agrees with the *In re Comeaux* holding, which provides for multiple per-claim exemptions.<sup>7</sup> To illustrate, where debtors claimed three personal injury exemptions, the exemption applied to each personal injury incident because (1) courts should construe exemption statutes liberally and in the debtor’s favor; (2) Congress placed aggregate limits in other similar statutes, but not in 1 U.S.C. § 522(d)(11)(D); and (3) debtors who suffer bodily injury deserve the small protection provided by personal injury exemption statutes.<sup>8</sup>

### **Conclusion**

Pursuant to NRS 21.090(1)(u), individuals filing for bankruptcy within Nevada may claim multiple personal injury exemptions if they have separate personal injury settlements. Because the statute’s purpose is to provide funding to support recovery in personal injury cases, the Court held that NRS 21.090(1)(u)’s allows for multiple personal injury exemptions on a per-claim basis.

---

<sup>4</sup> Kaplan, 132 Nev. at \*5.

<sup>5</sup> *In re Christensen*, 122 Nev. 1309, 1314, 149 P.3d 40, 43 (2006).

<sup>6</sup> *Hearing on S.B. 70 Before the Assembly Judiciary Comm.*, 2003 Leg., 72d Sess. 26 (Nev. 2003).

<sup>7</sup> *In re Comeaux*, 305 B.R. 802 (Bankr. E.D. Tex. 2003).

<sup>8</sup> *Id.*