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### Republic Silver State Disposal, Inc. v. Cash, 136 Nev. Adv. Op. 88 (December 31, 2020)

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*Republic Silver State Disposal, Inc. v. Cash*, 136 Nev. Adv. Op. 88 (December 31, 2020)<sup>1</sup>

TORT LAW: The right of contribution exists when two parties are jointly or severally liable for the same injury.

### **Summary**

The Court held that a tortfeasor who settles with a plaintiff may bring a contribution claim against a doctor who allegedly caused new injuries when treating the original injury. If two parties are jointly and severally liable for the same injury, a right to contribution exists. It is immaterial whether the parties are joint or successive tortfeasors; however, both parties must be liable for the injury for which the contribution is sought.

### **Background**

Marie Gonzales was injured in an accident involving one of Republic's employees. Dr. Andrew Cash treated Ms. Gonzales's original injury and allegedly inflicted further injuries. Ms. Gonzales sued Republic, and the parties settled for \$2 million. The settlement agreement terminated Ms. Gonzales's claims against her medical providers. Ms. Gonzales did not pursue a claim against Dr. Cash.

Within one year of the settlement agreement, Republic sued Dr. Cash for contribution. Republic alleged that Dr. Cash committed malpractice and caused Ms. Gonzales further injuries than those she originally sustained from the accident. Republic contended that it could seek contribution from Dr. Cash because the settlement agreement discharged Ms. Gonzales's claims against him and levied liabilities on Republic that outweighed its share. Dr. Cash claimed he was a successive tortfeasor, not a joint tortfeasor, and therefore Republic could not recover contribution.

The district court held that contribution was unavailable between successive tortfeasors and granted summary judgment to Dr. Cash. Additionally, the district court held that the settlement agreement terminated the defendant's liability. Republic appealed this decision.

### **Discussion**

The Court first looked to Nevada's contribution statute to determine when one tortfeasor can recover from another tortfeasor.

Under Nevada law, contribution allows a "tortfeasor who had paid more than his or her equitable share of the common liability" to recover the excess from a second tortfeasor, up to the amount of the second tortfeasor's "equitable share of the entire liability"<sup>2</sup> However, the tortfeasor alleging the contribution claim can only recover if the settlement terminates the second tortfeasor's liability.<sup>3</sup>

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<sup>1</sup> By Alexandra Russell.

<sup>2</sup> NEV. REV. STAT. § 17.225(2) (2019).

<sup>3</sup> NEV. REV. STAT. § 17.225(3) (2019).

Next, the Court looked to its precedent to reiterate that contribution claims by original tortfeasors are permitted against physicians who negligently treat the original injury.<sup>4</sup> The Court also relied on other state court decisions which reached the same conclusion.<sup>5</sup> However, the Court noted that no right to contribution exists if a successive tortfeasor causes a completely independent injury.

The Court then applied the right of contribution's definition and precedent to conclude that Dr. Cash was subject to a contribution claim as a joint tortfeasor. Since Dr. Cash treated Ms. Gonzales for the accident involving Republic, he and Republic are liable for injuries caused by malpractice and are therefore joint tortfeasors.<sup>6</sup> Thus, Republic was liable for Dr. Cash's malpractice and Dr. Cash was liable to Republic in excess of Republic's equitable share of the liability. Additionally, Ms. Gonzales's termination of her claims against Dr. Cash do not hinder Republic's contribution claim. The right of contribution can come from a settlement between a plaintiff and one tortfeasor as long as the settlement terminates the other tortfeasor's liability for the original tort.<sup>7</sup> This was the case here, as Ms. Gonzales's settlement contained a provision that discharged any claims she could bring against a medical provider. Therefore, the district court incorrectly concluded that Dr. Cash was not subject to contribution because he was a successive tortfeasor.

### **Conclusion**

The Court concluded that the right of contribution exists when two or more parties are jointly or severally liable for the same injury and one party pays more than its equitable share. Thus, it is immaterial whether the tortfeasors are joint or successive. The Court reversed the district's grant of summary judgment for Dr. Cash and remanded to the district court for further proceedings.

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<sup>4</sup> *Pack v. LaTourette*, 128 Nev. 264, 269, 277 P.3d 1246, 1249 (2012); *Saylor v. Arcotta*, 126 Nev. 92, 95, 225 P.3d 1276, 1278 (2010).

<sup>5</sup> *Lutz v. Boltz*, 100 A.2d 647, 648 (Del. Super. Ct. 1953); *Lujan v. Healthsouth Rehab. Corp.*, 909 P.2d 1025, 1030 (N.M. 1995); *Shadden v. Valley View Hosp.*, 915 P.2d 364, 368 (Okla. 1996).

<sup>6</sup> *Pack*, 128 Nev. at 269, 277 P.3d at 1249.

<sup>7</sup> *Doctors Co. v. Vincent*, 120 Nev 644, 652, 98 P.3d 681, 687 (2004).