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RECENT DEVELOPMENT

PRACTICE AND PROCEDURE: Bifurcation of Claims for Trial

Plaintiff, who was injured in an automobile accident, brought an action for damages for personal injuries against both the driver and the owner of the vehicle. The driver was alleged to have operated the vehicle negligently, and the owner was alleged to have entrusted it to the driver although he, the owner, knew that the driver was not qualified to operate it. The trial judge ordered the claims against the two defendants to be heard separately. On petition of the plaintiff for a writ to prohibit the judge from holding separate hearings, the Oklahoma Supreme Court assumed original jurisdiction and issued the writ.¹

The supreme court held that the driver and the owner were joint tortfeasors, and that a joint tort gives rise to a single cause of action that cannot be split or bifurcated, citing *Sykes v. Wright*.² However, the *Sykes* case is not authority for the proposition that an action against joint tortfeasors cannot be bifurcated for trial because (1) *Sykes* was not an action by a plaintiff against joint tortfeasors, and (2) any dictum in the *Sykes* case is superseded by section 2018(D) of the Oklahoma Pleading Code.³

In the *Sykes* case, the plaintiff sued one of several joint tortfeasors. After recovering a judgment that, apparently, was paid, the plaintiff sued another joint tortfeasor. The court held that a second suit could not be brought because the plaintiff was entitled to only one satisfaction. In the syllabus the court stated, "A joint tort gives rise to but a single cause of action, and a plaintiff may proceed jointly *or severally* against each or all of the wrongdoers until satisfaction of the cause of action has been received."⁴ Because *Sykes* permits a plaintiff to sue joint tortfeasors successively until he receives one satisfaction, it does not prevent separate hearings before any judgment is rendered where tortfeasors are joined as defendants in one action.

In *Knight*, the court also cited *Retherford v. Halliburton Co.*,⁵ but this case is not relevant because it does not involve joint tortfeasors. In *Retherford*, the plaintiff recovered a judgment for some of her damages. After this judgment was paid, she brought a second suit against the same defendant for additional items of injury that resulted from the same wrongful act. The court held that she could not bring two suits against the defendant where he was guilty of only one wrong.

Section 2018(D) of the Oklahoma Pleading Code provides that a court "in furtherance of convenience or to avoid prejudice, or when separate trials will

1. *Knight v. McBee*, 767 P.2d 878 (Okla. 1988) (Opala, V.C.J. concurring).

2. 201 Okla. 346, 205 P.2d 1156 (1949).

3. 12 OKLA. STAT. § 2018(D) (Supp. 1988). See 12 OKLA. STAT. § 2020(C) (Supp. 1988).

4. See *Fraser, Joint Tortfeasors*, 29 OKLA. B.J. 1933, 1936 (1958).

5. 572 P.2d 966 (Okla. 1978).

be conducive to expedition and economy” may order a separate trial of any claim or any issue in an action. This provision supersedes inconsistent holdings in older cases, such as the *Sykes* case, because a statute that is copied from another jurisdiction is adopted with the construction that is given to it by the other jurisdiction.⁶ Thus, to avoid prejudice, unrelated claims that are joined in a single action may be tried by different juries, and separate judgments may be rendered on each claim. Also, to avoid prejudice, separate trials of issues that are part of a single claim or of related claims that are joined in one action may be ordered, but ordinarily the same jury should hear all issues and a single judgment should be rendered.⁷

From the opinion in the *Knight* case it is not clear what the trial court ordered. However, separate hearings in regard to the driver’s negligence and the owner’s negligent entrustment would avoid prejudice because evidence as to the driver’s prior negligence would not be admissible in regard to the driver’s liability, but it would be admissible in regard to the owner’s negligent entrustment. Thus, the trial court should have been instructed to trifurcate the issues for trial as indicated in the concurring opinion.⁸

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6. See *Gay v. Akil*, 766 P.2d 985, 990 (Okla. 1988); *Atlantic Richfield Co. v. State*, 659 P.2d 930, 934 n.7 (Okla. 1983); *Harness v. Myers*, 143 Okla. 147, 288 P. 285 (1930). Section 2018(D) is based on Rule 42(b) of the Federal Rules of Civil Procedure.

7. See 9 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2387 (1971).

8. Under Federal Rule of Civil Procedure 42(b), the severance of claims is within the discretion of the trial court. *Smith v. Lightning Bolt Prods., Inc.*, 861 F.2d 363 (2d Cir. 1988).