

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET PHILLIPS, Personal Representative
of the Estate of REGEANA DIANE HERVEY,
deceased,

Plaintiff-Appellee,

v

MIRAC, INC.,

Defendant-Appellant.

FOR PUBLICATION
June 7, 2002
9:05 a.m.

No. 227257
Saginaw Circuit Court
LC No. 98-023923-NI

Updated Copy
August 30, 2002

Before: Gage, P.J., and Hoekstra and Meter, JJ.

HOEKSTRA, J.

In this appeal, we must determine whether the statutory cap on recoverable damages set forth in MCL 257.401(3) violates the Michigan Constitution. This provision limits a plaintiff's recovery in an action against a lessor of a motor vehicle, absent negligence by the lessor, when bodily injury or death occurs from an accident involving a motor vehicle leased for thirty days or less. We find that the damages cap provision of MCL 257.401(3) does not violate a party's rights to a jury trial, to equal protection, or to due process of law, under the Michigan Constitution. Consequently, we hold that the statute is constitutional. Because the trial court found the statute unconstitutional, we reverse and remand.

I. Facts and Procedural History

This action arises from an automobile accident in October 1997 that resulted in the death of Regeana Diane Hervey, a passenger in the automobile driven by Da-Fel Reed. Reed had rented the automobile involved in the accident for a period of thirty days or less from defendant Mirac, Inc., doing business as Enterprise Rent-A-Car. Plaintiff Margaret Phillips, who is the decedent's mother and the personal representative of the decedent's estate, commenced this action against defendant¹ on the basis of owner's liability under § 401 of the Michigan Motor Vehicle Code (MVC), MCL 257.401. The parties stipulated that under Michigan law, defendant is responsible for Reed's authorized operation of the rented automobile. Plaintiff did not allege that defendant was negligent in leasing the automobile to Reed.

¹ Plaintiff also sued Reed, who the jury found negligent, but Reed is not a party to this appeal.

A jury trial commenced in November 1999, and the jury returned a verdict in favor of plaintiff.² Both plaintiff and defendant presented orders for entry of judgment. Plaintiff sought entry of judgment for \$250,000, plus statutory interest, fees, and costs, while defendant sought entry of judgment for \$20,000, pursuant to MCL 257.401(3) (subsection 401[3]), plus statutory interest, fees, and costs. After oral argument concerning the constitutionality of the statutory cap on recoverable damages in subsection 401(3), the trial court determined that this provision is unconstitutional under the Michigan Constitution because it violates the rights to a jury trial, equal protection, and due process. Thus, on April 26, 2000, the trial court entered judgment in favor of plaintiff in the amount of \$250,000, plus interest, fees, and costs. This appeal ensued.

II. Standard of Review

The constitutionality of a statute is a question of law that this Court reviews de novo. *Tolksdorf v Griffith*, 464 Mich 1, 5; 626 NW2d 163 (2001); *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 461; 639 NW2d 332 (2001). "A statute is presumed constitutional, unless its unconstitutionality is readily apparent." *Tolksdorf, supra*; *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999); *Proctor, supra* at 461-462. A statute is not unconstitutional merely because it is undesirable, unfair, or unjust. *Doe v Dep't of Social Services*, 439 Mich 650, 681; 487 NW2d 166 (1992); *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).

III. Analysis

On appeal, defendant maintains that the trial court's finding that subsection 401(3) violates a party's rights to a jury trial, to equal protection, and to due process of law was error. Subsection 401(3) provides in pertinent part:

Unless the lessor, or his or her agent, was negligent in the leasing of the motor vehicle, the lessor's liability under this subsection is limited to \$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and \$40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.
[MCL 257.401(3).]

The challenge to the constitutionality of this damages cap raises a question of first impression.

A. Right to Trial by Jury

In the trial court, plaintiff first challenged the damages cap provision of subsection 401(3) by claiming that the statute violates the right under the Michigan Constitution to a jury trial. Specifically, plaintiff maintained, and continues to maintain on appeal, that subsection 401(3)

² Interestingly, and for that matter ironically, the jury verdict regarding plaintiff's damages was \$900,000. However, before the jury rendered its verdict, the parties, including plaintiff, defendant herein, and the driver of the automobile, Reed, entered into a "high-low" agreement. The agreement placed a \$150,000 minimum and \$250,000 maximum on plaintiff's recovery, subject to reduction pursuant to MCL 257.401(3). The agreement stated that Reed is uncollectible and that plaintiff will not seek entry of judgment against Reed on any verdict.

interferes with the plaintiff's right to have the jury assess damages and that the Legislature may not "whittle away" this right. According to plaintiff, the Legislature, by enacting this provision, has circumvented the jury's award of damages, which "hollows and eviscerates the right to trial by jury, thus rendering its existence one of mere form, and not substance."

To the contrary, defendant contends that subsection 401(3) is constitutional because it constitutes a valid and legitimate exercise of the Legislature's police power. In particular, defendant argues that subsection 401(3) does not violate the right to a jury trial because the Legislature has the authority to abolish or modify rights and remedies, whether they are based on common law or statutes. Defendant further argues that subsection 401(3) does not impinge on the jury's right to determine facts; rather, subsection 401(3) merely limits the legal consequences of the jury's finding. According to defendant, statutory damages caps constitute a legal, rather than factual, determination and therefore are not subject to the right to a jury trial.

In Michigan, our constitution guarantees the right to a jury trial. In relevant part, the Michigan Constitution provides that "[t]he right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law." Const 1963, art 1, § 14.³ First, we note that defendant does not challenge that the right to a jury trial extends to an action under the civil liability act of the MVC, MCL 257.401 *et seq.*⁴ Further, in Michigan the right to a jury trial includes the right to have the jury assess damages. See *Wood v DAIE*, 413 Mich 573, 583-584; 321 NW2d 653 (1982); *Leary v Fisher*, 248 Mich 574, 578; 227 NW 767 (1929); *Mink v Masters*, 204 Mich App 242, 246; 514 NW2d 235 (1994); *Equico Lessors, Inc v Original Buscemi's, Inc*, 140 Mich App 532, 536; 364 NW2d 373 (1985). Overlying a plaintiff's right to have a jury decide damages in a suit against the owner of a motor vehicle is subsection 401(3), which the Legislature adopted to limit the amount that a plaintiff may recover against the owner in certain circumstances. Contrary to what the trial court held, we find that this damages cap provision does not impinge on a plaintiff's right to a jury trial for two reasons.⁵

³ The Michigan Court Rules also indicate that "[t]he right of trial by jury as declared by the constitution must be preserved to the parties inviolate." MCR 2.508(A).

⁴ We also note that although not raised directly, at the time that the 1963 constitution was adopted, the civil liability act conferred a right to a jury trial because the act provided for actual damages, and therefore, an action brought pursuant to that act was an action at law, not equity. See *Anzaldua v Band*, 457 Mich 530, 539, 548; 578 NW2d 306 (1998).

⁵ Many other jurisdictions have addressed whether damages caps impinge on the constitutional right to a jury trial, and those cases decidedly point to two schools of thought: those striking down damages caps and those upholding damages caps. The trial court found persuasive cases in the former category, such as *Sofie v Fibreboard Corp*, 112 Wash 2d 636; 771 P2d 711 (1989), amended 780 P2d 260 (1989), and *Smith v Schulte*, 671 So 2d 1334 (Ala, 1995), which since the trial court's decision has been abrogated in *Ex parte Apicella*, 809 So 2d 865 (2001). This Court finds more persuasive the cases in the latter category, i.e., those upholding damages caps as constitutional. See, e.g., *Kirkland v Blaine Co Medical Center*, 134 Idaho 464; 4 P3d 1115 (2000); *Etheridge v Medical Center Hosps*, 237 Va 87; 376 SE2d 525 (1989); *Franklin v Mazda Motor Corp*, 704 F Supp 1325 (D Md, 1989).

First, our Legislature has the power to abolish or modify common-law and statutory rights and remedies. The Michigan Constitution provides that "[t]he common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed." Const 1963, art 3, § 7; see *Donajkowski v Alpena Power Co*, 460 Mich 243, 256, n 14; 596 NW2d 574 (1999) (our Legislature has express constitutional authority to change the common law); *Myers v Genesee Co Auditor*, 375 Mich 1, 7; 133 NW2d 190 (1965) (O'Hara, J.) (the common law and statutes abide unless "changed, amended or repealed"). Simply stated, what the Legislature gives, it may take away. *Lahti v Fosterling*, 357 Mich 578, 589; 99 NW2d 490 (1959); *Ramsey v Michigan Underground Storage Tank Financial Assurance Policy Bd*, 210 Mich App 267, 270; 533 NW2d 4 (1995). Where the Legislature can abolish a cause of action, it necessarily follows that it can limit the damages recoverable for the cause of action. *Kirkland v Blaine Co Medical Center*, 134 Idaho 464, 468; 4 P3d 1115 (2000).

Our Legislature has utilized its power to limit or eliminate defendant liability in certain cases. See, e.g., MCL 691.1407 (governmental immunity from tort liability); MCL 418.131 (worker's compensation is exclusive remedy against an employer); MCL 324.73301 (limitation of landowners' liability for injuries to guests to gross negligence or willful and wanton misconduct). In addition, through statutes of limitation or repose, our Legislature limits the time in which a plaintiff can bring an action, thereby preventing causes of action that it deems stale. See, e.g., MCL 600.5805 (statute of limitations for injuries to persons or property). Because our Legislature can change, amend, or repeal the common-law or statutory provisions and because that power allows it to limit or completely eliminate actions, we find that it logically follows that the Legislature may limit a plaintiff's remedy. We, like the Supreme Court of Idaho, "can discern no logical reason why a statutory limitation on a plaintiff's remedy is any different than other permissible limitations on the ability of plaintiffs to recover in tort actions." *Kirkland, supra* at 468.

Nor do we believe that at the time the Constitution of 1963 was adopted, the intent was to prohibit the Legislature from addressing appropriate damages. A number of Michigan statutes at that time provided, and continue to provide, for double or treble damages in civil actions. See, e.g., MCL 230.7 (providing treble damages for injuries to bridges); MCL 429.103 (providing double the amount of damages sustained by breach contract of sale for Michigan wheat). Although these statutes increase, rather than decrease, the amount of damages awarded, they nonetheless modify the jury award. Such increases in damages demonstrate that a defendant's right to have a jury assess liability and damages can be legislatively altered.

Second, subsection 401(3) does not violate the right to a jury trial because it does not impinge on the jury's right to decide cases. In Michigan, trial by jury encompasses the right to have a jury hear a claim and determine issues of fact. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 132; 573 NW2d 61 (1997). The damages cap in subsection 401(3) in no way removes from the jury the determination of facts and of the amount of damages that the injured plaintiff incurred. Rather, subsection 401(3) simply limits the

amount of those damages that can be recovered from a lessor of vehicles.⁶ In other words, subsection 401(3) only limits the legal consequences of the jury's finding. See *Kirkland, supra* at 469. Once the jury has reached its verdict, the trial court merely enters a judgment on the verdict that is consistent with the law. See *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 299-300; 549 NW2d 47 (1996) (statute requiring that a jury damage award be reduced by the amount a plaintiff receives from a collateral source does not violate the right to a jury trial).⁷ Again, we agree with the Supreme Court of Idaho, that "[t]he legal consequences and effect of a jury's verdict are a matter for the legislature (by passing laws) and the courts (by applying those laws to the facts as found by the jury)." *Kirkland, supra* at 469.

For these reasons, we hold that subsection 401(3) does not violate the right to trial by jury as guaranteed by the Michigan Constitution, Const 1963, art 1, § 14.

B. Equal Protection

Plaintiff also challenged in the trial court the damages cap provision of subsection 401(3) on the basis that it violates the right under the Michigan Constitution to equal protection. Specifically, plaintiff maintained, and continues to maintain on appeal, that the strict scrutiny review standard applies because the fundamental right to a jury trial is involved. Under this standard, plaintiff concludes that subsection 401(3) violates equal protection because defendant cannot prove that the damages cap serves a compelling interest. Plaintiff concludes, in the alternative, that the statute cannot survive the substantial relationship test and also "flunks" the rational basis test. Defendant contends, to the contrary, that subsection 401(3) does not violate equal protection because it is rationally related to the purpose of protecting the viability of the automobile rental business in Michigan.

The Michigan Constitution guarantees the right to equal protection: "[n]o person shall be denied the equal protection of the laws." Const 1963, art 1, § 2. "This constitutional guarantee requires that persons similarly situated be treated alike." *Wysocki v Felt*, 248 Mich App 346, 350; 639 NW2d 572 (2001). Our first task in determining whether subsection 401(3) violates the constitutional guarantee of equal protection is to ascertain the proper level of review to apply. *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). If the legislation creates an inherently suspect classification, such as race, ethnicity, and national origin, or affects a fundamental right, the "strict scrutiny" test applies. *Crego, supra*; *Vargo v Sauer*, 457 Mich 49, 60; 576 NW2d 656 (1998); *Proctor, supra* at 469. Other classifications that are suspect, but not

⁶ Subsection 401(3) does not limit the recovery of damages if the lessor was negligent, nor does it affect the right to collect damages from other tortfeasors.

⁷ The trial court found inapplicable *Heinz, supra*, which held that the collateral-source rule codified in MCL 600.6303 did not alter the jury's assessment of damages, but simply recognized that the plaintiffs were compensated already for part of the damages, because "there was no statutory limit on the jury's ability to assess the plaintiff's damages." We disagree. Here, like in *Heinz*, there is no statutory limit on the jury's ability to assess a plaintiff's damages; rather, subsection 401(3) merely provides that recovery of the damages from a specific party, the lessor of a vehicle leased for a specific period, is limited to a certain amount, not that the jury may not assess a higher amount of damages that may be recoverable from tortfeasors.

inherently suspect, such as gender and mental capacity, are subject to the intermediate-level "substantial relationship" test. *Proctor, supra*; *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 717; 575 NW2d 68 (1997). However, social or economic legislation is generally examined under the "rational basis" test. *People v Perlos*, 436 Mich 305, 331; 462 NW2d 310 (1990); *Wysocki, supra* at 354; *Proctor, supra*.

Here, the legislation does not create an inherently suspect classification, nor is the fundamental right to a jury trial implicated, as explained above, and thus strict scrutiny is not required. Thus, we reject plaintiff's contention that strict scrutiny is appropriate. Nor is the heightened scrutiny of the substantial relationship test necessary. In other cases, this Court has held that classification schemes created by various tort reform legislation are social or economic legislation subject to the rational basis test. *Wysocki, supra* at 366; *Stevenson v Reese*, 239 Mich App 513, 517; 609 NW2d 195 (2000); *Neal, supra* at 718; *Heinz, supra* at 300. Because the statute in question falls into that category, the rational basis test must be applied.

Our Supreme Court has recently explained the rational basis test:

Under rational-basis review, courts will uphold legislation as long as that legislation is rationally related to a legitimate government purpose. To prevail under this highly deferential standard of review, a challenger must show that the legislation is "arbitrary and wholly unrelated in a rational way to the objective of the statute." A classification reviewed on this basis passes constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable. Rational-basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with "mathematical nicety," or even whether it results in some inequity when put into practice. Rather, the statute is presumed constitutional, and the party challenging it bears a heavy burden of rebutting that presumption. [*Crego, supra* at 259-260 (citations omitted).]

In the present case, plaintiff failed to overcome the presumption of constitutionality. In her brief, plaintiff asserts that the automobile rental lobby essentially duped the Legislature into believing that a problem existed within the industry regarding large jury-determined damages awards in negligence cases and that the industry needed legislative protection in order to ensure the continued operation of these businesses in Michigan, when in fact no problem actually existed. Whether we agree with this assertion is not the issue before us. The "wisdom, need or appropriateness of the legislation" is not for us to decide. *Crego, supra* at 260. Rather, we must determine only if "any set of facts, either known or which could reasonably be assumed" supports the Legislature's judgment. *Crego, supra* at 259-260. We find that this legislation passes that test because it can reasonably be assumed that Michigan has a legitimate interest in the continued operation of automobile rental businesses, and protecting those businesses from large damages awards in jury trials bears a rational relationship to that end. Because subsection 401(3) is rationally related to a legitimate government purpose, it survives rational basis review and is constitutional. No violation of the Equal Protection Clause exists here.

C. Due Process

Finally, defendant challenges on appeal the trial court's holding that the damages cap violates the Due Process Clause of the Michigan Constitution, which provides that no person shall "be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. Because the test to determine whether legislation passes constitutional muster under the Due Process and Equal Protection Clauses is essentially the same, *Doe, supra* at 682, n 36; *Shavers v Attorney General*, 402 Mich 554, 612-613; 267 NW2d 72 (1978), subsection 401(3) does not violate due process.

Reversed and remanded for entry of judgment consistent with this opinion. We do not retain jurisdiction.

Gage, P.J., concurred.

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage