ORIGINAL

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

BILL RICHARDS and JOAN RICHARDS, Plaintiffs, vs. FOREMOST INSURANCE COMPANY, FARMERS INSURANCE EXCHANGE, and MICHELLE SCHAEFER, Defendants, MICHELLE SCHAEFER, Third-Party Plaintiff/Appellant, vs. BROWN & SON MOBILE HOME SERVICE, LLC, an Oklahoma limited liability company, Third-Party Defendant/ Appellee, JASON GASTON d/b/a JG MOBILE HOME SERVICE, Third-Party Defendant.	Case No. 121,293

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STATE OF OKLAHOMA

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APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE ALETIA HAYNES TIMMONS, DISTRICT JUDGE

AFFIRMED

Steve Holden Caleb McKee HOLDEN LITIGATION, HOLDEN,P.C. Tulsa, Oklahoma	For Third-Party Plaintiff/ Appellant
Jason L. Glass BAUM GLASS JAYNE CARWILE & PETERS, PLLC Tulsa, Oklahoma	For Third-Party Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

¶1 Third-party plaintiff, Michelle Schaefer, appeals the judgment of the district court that, as a matter of law, she could not seek contribution from third-party defendant, Brown & Son Mobile Home Service LLC, after she settled the plaintiffs' claim. On review, we find that 23 O.S. § 15 extinguished any common liability for damages in this case, and hence, no right of contribution remains.

I.

¶2 This matter began when the plaintiffs, Bill and Joan Richards, contracted with Brown & Son to move their mobile home. Brown & Son was able to mount the home on wheels and prepare it to move; however, the company had equipment problems and was unable to move the home. Another party—Jason Gatson, d/b/a JG Mobile Home Service (Gatson)—agreed to complete the job. Unfortunately, Gatson also experienced difficulty with the relocation. The mobile home became stuck and was evidently seriously damaged by the efforts of Brown & Son and Gatson. The plaintiffs contacted their insurer but were told that their policy of insurance did not cover damage caused while moving the home.

¶3 The plaintiffs sued their insurers, Foremost Insurance Company and Farmers Insurance Exchange. They also sued their insurance agent, Michelle Schaefer. They did not sue Brown & Son or Gatson. The petition alleged the plaintiffs, prior to the move, contacted Ms. Schaefer and inquired if they needed an additional rider to cover any damage that might occur to the mobile home during the move. Ms. Schaefer allegedly assured them on two separate occasions that their existing coverage would include any such damage.

¶4 Ms. Schaefer filed a third-party petition against Brown & Son and Gatson. Therein, she pled that if she was found liable, she was entitled to contribution from Brown & Son and Gatson. Brown & Son moved to bifurcate trial on the issue of Ms. Schaefer's liability, arguing that the question of whether Ms. Schaefer was liable should be decided before any resulting question of contribution. The court eventually granted bifurcation.

¶5 The plaintiffs then dismissed all their claims after reaching a settlement with Ms. Schaefer and the insurance companies. Gatson was also later voluntarily dismissed. Brown & Son filed a motion for summary judgment arguing that Ms. Schaefer's remaining claim for contribution failed as a matter of law. Brown & Son argued that the legislature's 2011 amendment to 23 O.S. § 15, which abolished common liability for joint tortfeasors, rendered the 12 O.S. § 832 rule on contribution between joint tortfeasors inapplicable.

¶6 The court granted Brown & Son's motion for summary judgment, finding that Schaefer's claim for contribution against Brown & Son and Gatson failed as a matter of law.[1] Ms. Schaefer appeals.

II.

¶7 Summary judgments are reviewed *de novo. Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053. Additionally, this appeal specifically raises legal questions concerning the interpretation of two statutes, 12 O.S. § 832 and 23 O.S. § 15, and the interplay between them. In cases involving a question of law relating to statutory interpretation, the appropriate appellate standard of review is also *de novo*, "*i.e.*, a non-deferential, plenary and independent review of the trial court's legal ruling." *Fulsom v. Fulsom*, 2003 OK 96, ¶ 2, 81 P.3d 652, 654.

III.

A.

¶8 Here, Ms. Schaefer sought contribution from Brown & Son pursuant to 12 O.S. § 832, part of Oklahoma's implementation of the Uniform Contribution Among Tortfeasors Act. As relevant here, the act provides:

> A. When two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even

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[1] In the same motion, Ms. Schaefer also argued that she was entitled to indemnification. The trial court also rejected this theory, but Ms. Schaefer did not appeal the trial court's ruling in this respect. *See Petition in Error,* Exhibit 3 (failing to reference indemnification). To the extent this claim of error is considered preserved, we note here that we agree with the trial court's rejection of Ms. Schaefer's claim for indemnification. There was no contract or legal relationship between Ms. Schaefer and Brown & Son that would provide a right of indemnity. *National Union Fire Ins. Co. v. A.A.R. Western Skyways, Inc.*, 1989 OK 157, ¶ 9, 784 P.2d 52, 55 (holding that "the right of indemnity" requires "a legal relationship arising out of either contractual or vicarious liability on which to base the remedy ...").

> though judgment has not been recovered against all or any of them except as provided in this section.

12 O.S. § 832.

¶9 In this case, Ms. Schaefer settled the alleged joint liability that she and Brown & Son may have shared. *Barringer v. Baptist Healthcare of Oklahoma*, 2001 OK 29, 22 P.3d 69, holds that § 832 allows one joint tortfeasor to effectively settle an entire joint liability and, if the plaintiff also releases the non-settling joint tortfeasor, the settling defendant may sue the non-settling joint tortfeasor for contribution to the settlement.[2] That is what occurred in this case, and the record is reasonably clear that Ms. Schaefer made a *prima facie* case for contribution from Brown and Son pursuant to § 832 under extant caselaw.[3]

¶10 A significant question arises that existing caselaw does not address, however. In 2011 the legislature amended 23 O.S. § 15 to state that, "[i]n any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor." As such, even though tortfeasors may still be "jointly liable" for the

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[2] Schaefer attached an affidavit to her response to the motion for summary judgment stating the plaintiffs had specifically released, by name, Brown & Son and Gatson for any potential liability in the settlement agreement between Schafer, the insurer, and the plaintiffs.

[3] For purposes of this opinion, we presume that neither subsection (C) nor (G) of § 832, nor any theory that the harm suffered by the Richards was divisible, otherwise precluded contribution here.

purposes of suit, there is no longer a "joint" or common liability for the resulting damages.[4]

¶11 As relevant here, Brown & Son argued that contribution under 12 O.S. § 832 is premised entirely on two or more tort defendants having a common liability for damages, and no such common liability existed here because 23 O.S § 15 rendered the liability of the defendants several only. The effect of § 15 on the contribution act of 12 O.S. § 832 does not appear to have been previously discussed in Oklahoma caselaw.

¶12 Nevertheless, the argument is reasonably straightforward. The basis of § 832 contribution is that, when a joint tortfeasor settles and the plaintiff releases the other joint tortfeasor, the entire liability is settled. The settling tortfeasor is therefore entitled to contribution because it paid the whole of the common liability. But, after § 15 was enacted, the liability for damages between two joint tortfeasors is no longer common and a proportion of the total liability is assigned severally to each of the joint tortfeasors. If the common liability no longer exists, it is difficult to envisage any legal right of a tortfeasor to settle damages that are the sole responsibility of another, unless it does so gratuitously. It is logical that the right to contribution, in many cases, no longer exists. The settling joint tortfeasor settles his or her share of damages alone. We

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[4] Section 15 does not abolish the traditional concept of joint tortfeasors. There is a difference between parties being "jointly liable" for purposes of suit and procedure, and parties being "jointly liable" for a resulting money judgment. Because of the potential for confusion between joint liability in tort and joint liability for the resulting judgment, we will endeavor to refer to the latter as a "common" liability rather than a "joint" liability.

see no means by which § 832 still allows a party to settle a common liability that no longer exits.

¶13 Although Oklahoma courts have not ruled on this issue, we find substantial persuasive authority supporting our reading. Several federal trial courts in Oklahoma have concluded that contribution claims are effectively prevented in cases that fall under § 15. *See, e.g., AMC W. Hous. LP v. NIBCO, Inc.*, CIV-18-959-D, 2021 WL 4302246, at *3 (W.D. Okla. Sept. 21, 2021) ("To the extent [defendant] is held liable on a negligence theory, it will never pay more than its pro rata share because, pursuant to § 15, its liability will be several only. Accordingly, any claim for contribution derived from [defendant's] alleged negligence is not viable.").[5]

¶14 *O'Dell v. Baker*, 22-CIV-147-RAW-GLJ, 2023 WL 2597888, at *1 (E.D. Okla. Mar. 22, 2023), further addressed a situation where a defendant claimed to be a concurrent rather than a joint tortfeasor and argued that 23 O.S. § 15 and 12 O.S. § 832 should be read together to still allow contribution where the

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[5] *See also, Loos v. Saint-Gobain Abrasives, Inc.*, CIV-15-411-R, 2016 WL 5017335, at *6 (W.D. Okla. Sept. 19, 2016) ("While [defendant] claims it could be forced to pay for more than its proportionate share of liability if it is found negligent, any possibility of this lapsed upon Oklahoma's 2011 amendment to its joint liability statute."); *Njuguna v. C.R. England, Inc.*, CIV-19-379-R, 2022 WL 264551, at *3 (W.D. Okla. Jan. 27, 2022) ("[E]ven if [third-party plaintiff] could demonstrate [third-party defendant] was partially at fault for Plaintiff's death, it has provided no evidence that it has paid, or will be likely to pay, more than its fair share of damages if its claims against [third-party defendant] are dismissed. 23 O.S. § 15 abolished this possibility when it adopted several liability as the only appropriate way to apportion damages pursuant to Oklahoma law."); *Am. Nat'l Prop. & Cas. Co. v. Select Mgmt. Grp., LLC*, 528 F. Supp. 3d 1188, 1196 (N.D. Okla. 2021) ("Since a joint tortfeasor in Oklahoma is only liable for the amount of damages allocated to him, the availability of insurance to pay judgments against the Bradshaw Defendants is immaterial from the Millers' perspective. Even if the Bradshaw Defendants failed to pay their share of an award, the Millers would not be answerable for the shortfall.").

tortfeasors are "concurrently liable." The court found that "23 O.S. § 15 adopted several liability as the only appropriate way to apportion damages pursuant to Oklahoma law" and rejected this distinction. This is consistent with the rule of *Brigance v. Velvet Dove Restaurant, Inc.*, 1986 OK 41, 725 P.2d 300, that if acts are "combined to produce directly a single injury, each defendant is responsible for the entire result." *Id.* at ¶ 12. Section 15 abolishes *common liability for a judgment*, not the concept of joint or concurrent tortfeasors.

¶15 Examining cases from other states that have a contribution statute but have abolished joint and several liability, we find several states have ruled that the abolition of common liability has curtailed or limited contribution claims. As specifically related to settlement, *Kottler v. State*, 136 Wash. 2d 437, 442, 963 P.2d 834, 837-846 (1998), states:

> [I]n 1986 the Legislature altered tort liability in Washington by abolishing joint and several liability in most circumstances in favor of proportionate liability.... Under proportionate liability a negligent party is liable for his own proportionate share of fault and no more. Therefore, *when a proportionately liable party settles, he settles for his share alone, and he may neither seek nor be liable for contribution.*

Id. (citations omitted, emphasis added).[6] We find a clear consensus in these persuasive decisions and hold that 23 O.S. § 15's mandate that "a joint tortfeasor

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[6] *See also Neil v. Kavena*, 176 Ariz. 93, 95, 859 P.2d 203, 205 (Ct. App. 1993) (noting that, since Arizona abolished joint and several liability in favor of liability being several only, "contribution is essentially unnecessary"); *Branum v. Petro-Hunt Corp.*, 4:09-CV-035, 2010 WL 1977963, at *2 (D.N.D. Mar. 15, 2010) (holding that the North Dakota law that abolished joint and several liability foreclosed a contribution claim); *McIntyre v. Balentine*, 833 S.W.2d 52, 58 (Tenn. 1992) (noting that after the abolition of joint and several liability, "situations where a defendant has paid more than his 'share' of a judgment will no longer arise, and therefore the Uniform Contribution Among Tort-feasors Act, T.C.A. §§ 29-11-101 to 106 (1980), will no longer determine the apportionment of liability between codefendants); *Vining*

shall be liable only for the amount of damages allocated to that tortfeasor" eliminated Ms. Schaefer's ability to seek contribution in this case.

¶16 In summation, § 15 has eliminated common liability for a judgment in many situations, including the current case. The prime rationale and purpose of the contribution act was to allow for contribution where one joint tortfeasor paid more than their pro rata share of a common liability. In cases where this potential overpayment has been eliminated by § 15, contribution is no longer available. Accordingly, the judgment entered in favor of third-party defendant Brown & Son is affirmed.

B.

¶17 Ms. Schaefer brings several other arguments that we will also briefly address. The first is that the § 15 abolition of common liability for a judgment is irrelevant because § 832(A) states that the contribution act is applicable in cases where defendants are "jointly *or* severally liable" (emphasis supplied).[7] We do not interpret this language as Ms. Schaefer does. "Severally" commonly means "[d]istinctly" or "separately." SEVERALLY, Black's Law Dictionary (12th ed. 2024). Prior to § 15, the liability for a judgment could be "joint or several" in that

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v. Capone, CV89 02 99 26S, 1990 WL 284420, at *2 (Conn. Super. Ct. Apr. 12, 1990) (noting that Connecticut statue 52-572h abolishes joint and several liability and there is no need for contribution under this section because any judgment against a defendant will be for his share of fault only).

[7] Unlike the more common "jointly and severally liable" the phrase "jointly or severally liable" appears unique to 12 O.S. § 832 and was imported into Oklahoma law directly from the uniform act without any prior history, with the exception of a territorial statute, Section 3958: "Nothing in this Code shall be so construed as to make a judgment against one or more defendants jointly or severally liable, a bar to another action against those not served." *See McMaster v. City Nat. Bank of Lawton*, 1909 OK 115, ¶ 3, 101 P. 1103, 1104; *Outcalt v. Collier*, 1899 OK 81, 58 P. 642, 644. The phrase was not used again until *Berry v. Empire Indem. Ins. Co.*, 1981 OK 106, ¶ 10, 634 P.2d 718, 720 (discussing § 832).

the liability was common, and a plaintiff could collect the entire amount from one defendant, or from both defendants, individually in turn, or in any proportion the plaintiff chose or was able to collect. Hence, even if the common liability was not placed entirely on one defendant, the amount collected severally from a defendant could still exceed that defendant's adjudged liability, and contribution would be appropriate.

¶18 Where defendants are *only* severally liable, however, there is no common liability a defendant may be required to pay, and no legal means to extract more from a tortfeasor than its pro rata share of the common liability. Payment in excess of actual liability is, however, the gravamen of contribution under the contribution act. "The right of contribution exists only in favor of a tortfeasor who has paid more than their pro rata share of the common liability." 12 O.S. § 832(B). Without it, no contribution is available.[8] It would be irrational to interpret the contribution act as applying to a several liability when the possibility of a severally liable tortfeasor paying more than their pro rata share of the common liability has been eliminated by § 15.

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[8] Colorado initially appears to have reached a different conclusion. In *Graber v. Westaway*, 809 P.2d 1126 (Colo. App. 1991), that court relied on the same argument as Shaefer does here, that contribution is still available even if the defendants are only severally liable, finding that "[t]his disjunctive language does not evince an intent by the General Assembly to require a defendant to establish both joint and several liability as a prerequisite to his right of contribution." *Id.* at 1128. Looking more deeply at *Graber*, however, its rationale becomes clear. *Graber* relies on *Watters v. Pelican Int'l, Inc.*, 706 F. Supp. 1452, (D. Colo. 1989). *Watters* held that Colorado's proportional liability statue, Colo. Rev. Stat. Ann. § 13-21-111.5 (West), did *not* abolish common liability. In that case, contribution is clearly still available because a defendant may pay more than his pro rata share of the common liability. *See* Colo. Rev. Stat. Ann. § 13-50.5-102 (West). Title 23 O.S. § 15, by comparison and as discussed above, abolishes common liability in many cases.

¶19 Ms. Schaefer also argues that no legislative intent to repeal § 832 is evident in § 15; that repeal by implication is not favored; and that it would be improper to find that the legislature had left § 832 without any purpose or effect without repealing it. We do not contend that § 15 somehow repeals § 832 in its entirety or leaves it without purpose, but only that its contribution rules have been substantially altered in some circumstances. The § 832 abrogation of the common law that "the release of one releases all" is not affected by § 15. Section § 832(H) contribution was, however, premised on allowing one tortfeasor to take on more that their pro rata share of a common liability by making a unilateral settlement. In cases that fall under § 15, however, there is no longer a common liability to settle.[9]

¶20 Finally, Ms. Schaefer argues that the courts have continued to apply § 832 in the years since § 15 was passed, indicating a decision that § 832 is still in full force. Significantly, however, we find only four published cases involving § 832 since 2011, when the statute was last amended, and none of those cases order or approve of contribution.[10] We find no indication that the legislature intended a contrary result to that we reach here.

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[9] Additionally, we note that § 15 does not apply as against the state or prior to its effective date. 23 O.S. § 15.

[10] In *Pain v. Sims*, 2012 OK CIV APP 76, 283 P.3d 343, the cause of action accrued before the § 15 was enacted. *Clabaugh v. Grant*, 2015 OK CIV APP 33, ¶ 24, 347 P.3d 1044, 1051, relies on the principle that there is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the plaintiff's injury, and hence does not reach any question as to § 15. *Lay v. ConocoPhillips Co.*, 2019 OK CIV APP 73, ¶ 1, 453 P.3d 1267, 1268 holds that § 832 is subject to the statute of repose for claims arising from deficiency in design, planning, or construction of improvement to real property, and hence does not reach any question as to § 15. Finally, *Farley v. City of Claremore*, 2020 OK 30,

¶21 **AFFIRMED**.

HIXON, J., and HUBER, concur.

October 11, 2024

¶ 49, 465 P.3d 1213, 1237–38 cites § 832 only for an example of the "single or indivisible injury" rule.