IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,778

REGAN HODGES, as Representative Heir at Law,
and as Administrator of the Estate of TIMOTHY HUNT,
Plaintiff,

v.

WALINGA USA INC. and WALINGA INC.,
Defendants.

SYLLABUS BY THE COURT

1.

Under Kansas law, an arbitration action does not qualify as a judicial determination of comparative fault.

2.

Under Kansas law, the confirmation of an arbitration award by a state court judgment does not qualify as a judicial determination of comparative fault for purposes of invoking the one-action rule.

On certification of two questions of law from the United States District Court for the District of Kansas, ERIC F. MELGREN, judge. Oral argument held May 18, 2023. Opinion filed July 21, 2023. The answers to the certified questions are determined.

Lyndon W. Vix, of Fleeson, Gooing, Coulson & Kitch, L.L.C., of Wichita, argued the cause, and *Brennan B. Delaney,* of Langdon & Emison, LLC, of Lexington, Missouri, was with him on the briefs for plaintiff.

Randy P. Scheer, of Baty Otto Coronado Scheer PC, of Springfield, Missouri, argued the cause, and *S. Jacob Sappington*, pro hac vice, of same firm, was with him on the brief for defendants.

The opinion of the court was delivered by

ROSEN, J.: In this opinion, we address two questions of law certified to our court by the United States District Court for the District of Kansas. Certified question proceedings are unique because the lawsuit at issue is not pending before any Kansas state court. See *Bruce v. Kelly*, 316 Kan. 218, 219, 514 P.3d 1007 (2022). The Kansas Legislature has granted this court jurisdiction to answer questions of state law raised in other jurisdictions when the responses may control the outcome of the matter pending before the certifying court and no Kansas precedent addresses the certified questions. See K.S.A. 60-3201 et seq.

The federal lawsuit is a tort action following a worker's death in an agricultural accident. One set of potential defendants agreed to arbitration with the decedent's heirs and was found liable for damages, and a Missouri district court confirmed this award. The decedent's heirs brought a separate action in federal district court against a different set of defendants. Following the defendants' motion for summary judgment, the federal court certified questions to this court to determine whether the separate action is barred by the Kansas one-action rule.

The factual background provides the context for our discussion of the certified questions. Timothy Hunt was an employee of a farm located in Mulvane, Kansas. The farm was operated by numerous entities to whom we will refer collectively as Butts Farms. In the fall of 2019, Hunt was directed to use a grain vacuum produced by Walinga Inc. and Walinga USA Inc. to remove corn from a grain trailer owned by Butts Farms. To do this, Hunt had to stand on top of the corn while operating the vacuum. Hunt became trapped in the corn as he operated the vacuum, and the corn slowly buried him, compressing his chest and eventually preventing him from breathing, ultimately causing his death.

On April 2, 2021, Hunt's daughter Regan Hodges, in her capacity as the administrator of Hunt's estate, filed suit in Kansas federal district court against the Walinga defendants, the manufacturer of the grain vacuum system. Then, on July 26, 2021, while the suit was still in its early stages, Hunt's children, including his daughter Regan Hodges as the administrator of the Hunt's estate, entered into an arbitration agreement with Butts Farms. The parties agreed to conduct the arbitration in a Missouri venue but subject to Kansas substantive and procedural law, when applicable.

On August 9, 2021, the arbitrator entered his award in favor of the claimants. After hearing testimony from various witnesses, he found Butts Farms failed to exercise reasonable care in protecting Hunt from the dangers of operating the vacuum. Specifically, it required him to operate the vacuum without a safety harness; it required him to operate the vacuum without another employee present who could intervene if Hunt was trapped in the corn; and the trailer from which the corn was being removed was improperly maintained. Butts Farms also failed to exercise reasonable care in providing safe and suitable machinery in that the vacuum system was defective and unreasonably dangerous in several respects: it lacked a shutoff valve; it lacked a sensor with automatic shutoff at the nozzle; and it lacked adequate warning or notice to alert Hunt of the potential hazards.

The arbitrator entered awards of $5,000,000 for past noneconomic damages for Hunt's conscious pain and suffering he experienced prior to his death; $7,000,000 for economic damages for Hunt's wrongful death, including loss of parental care; and $250,000 for noneconomic damages for Hunt's wrongful death, including bereavement and loss of companionship.

On August 10, 2021, Hodges filed in the Circuit Court of Lafayette County, Missouri, an application to confirm the arbitration award. On August 17, 2021, the circuit

court entered final judgment confirming the arbitration award. The judgment incorporated the arbitration award.

On March 18, 2022, the Walinga defendants filed a motion for summary judgment in the federal court action, asserting that the suit against them was barred in its entirety by the Kansas one-action rule. They argued that the arbitration proceeding, together with the confirmation in the circuit court, were a judicial proceeding and the plaintiffs had used up their day in court, barring further claims. The federal court was unable to find a definitive answer to whether Kansas law bars a suit against some defendants when other potential defendants have reached an arbitrated resolution of the claims against them. The court certified two questions to this court:

> "1. Under Kansas law, does an arbitration action qualify as a judicial determination of comparative fault where no other potential tortfeasors were involved in the arbitration?
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> "2. If it does not, then under Kansas law, does the confirmation of an arbitration award by state court judgment qualify as a judicial determination of comparative fault in light of *Childs* [*v. Williams*, 243 Kan. 441, 757 P.2d 302 (1988)]." *Hodges v. Walinga USA Inc*., ___ F. Supp. 3d ___, 2022 WL 16854281, at *6 (D. Kan. 2022).

This court formally accepted the certified questions and set a briefing schedule.

The focus of the two questions before us is the interplay between an arbitrated award against one set of tortfeasors and a litigated proceeding against another set of tortfeasors. Hodges and the heirs took their dispute with the Butts Farms to arbitration and prevailed in that proceeding. They seek to resolve their claims against the manufacturer in a separate proceeding in federal court. Kansas follows a "one-action" rule, which generally requires that, in order to determine the relative fault of various parties, all claims must be presented in a single action.

As a prelude to addressing the specific questions before us, we will review the evolution of Kansas law that has led to the uncertainty that generated the questions.

In 1974, Kansas departed from the common-law theory of contributory negligence and adopted a statutory scheme of comparative fault. See L. 1974, ch. 239, § 1; K.S.A. 60-258a. Under K.S.A. 2022 Supp. 60-258a(d), when recovery is permitted against more than one party, each party is liable for that party's portion of the award in the proportion to the causal negligence attributed to all the parties against which recovery is permitted. In wrongful death actions, on the motion of any party against whom a claim of negligence is asserted, any other person whose causal negligence is claimed to have contributed to the death must be joined as an additional party. K.S.A. 2022 Supp. 60-258a(c).

Over time, Kansas adopted a "one-action" rule based on the comparative fault statute. In essence, the rule requires that all defendant tortfeasors be sued in a single action, no matter what the nature of the negligence tort is. This rule reduces the number of suits and simplifies the process of assessing the degree of culpability by various parties in a negligence action, including plaintiffs and multiple defendants. The rule is prudential and does not expressly arise from the Kansas comparative fault statute, and the rule is not followed in all the states that have adopted comparative fault statutes.

The court first articulated the one-action rule in *Eurich v. Alkire*, 224 Kan. 236, 579 P.2d 1207 (1978). The court addressed the situation in which one of two occupants of a vehicle was found liable to the driver of another vehicle after a collision. After that trial, the defendant in that action brought a second action seeking indemnity from the other occupant of the vehicle. This court disallowed the indemnity suit, holding that defendant in the first trial had an obligation to cross-claim against the other occupant:

> "The provision for determining the percentage of causal negligence against each person involved in a negligence action contemplates that the rights and liabilities of each person should be determined in one action. Because all issues of liability are determined in one action there can be no reasonable argument that the issues should be relitigated. Likewise, there is no reasonable argument for the proposition that a claim for damage arising out of one collision or occurrence should not be presented at the time negligence is originally determined. . . .
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> "We conclude that all persons who are named as parties and who are properly served with summonses are bound by the percentage determination of causal negligence. *Because the statute contemplates that each party has a right to cross-claim against any or all other parties to a lawsuit, we hold that any party who fails to assert a claim against any other party in a comparative negligence action is forever barred.* A corollary rule naturally follows that a person who has not been made a party to a comparative negligence case should not be bound by a judgment therein, even though his causal negligence may have been determined." (Emphasis added.) *Eurich*, 224 Kan. at 238.

In a subsequent case in which this court considered a question certified by the federal district court, we addressed what happens when a driver injured in an accident first successfully brings suit against the driver of another car and then attempts to augment those damages in a subsequent suit against the manufacturer of the plaintiff's vehicle. In *Albertson v. Volkswagenwerk Aktiengesellschaft*, 230 Kan. 368, 371, 634 P.2d 1127 (1981), this court reiterated its adherence to the one-action rule. The court held that the doctrine of comparative fault requires that all parties to a tortious occurrence have their fault determined in one action.

In *Albertson*, the plaintiff's first action—against the other driver, a Kansas resident—was litigated in state court. The second action—against the manufacturer—was brought in federal court under diversity jurisdiction. The plaintiff contended that two suits were permissible because he would not be able to include the other driver in the diversity action. This court pointed out that the plaintiff could have sued the manufacturer

in state court, which would have allowed the plaintiff to pursue a single action against both defendants. It was the plaintiff's strategic choice not to join the corporate defendant, and the court held the plaintiff was bound by that decision, as ill-advised as it turned out to be: "Under the doctrine of comparative fault all parties to an occurrence must have their fault determined in one action, even though some parties cannot be formally joined or held legally responsible. Those not joined as parties or for determination of fault escape liability." 230 Kan. at 374.

What appeared to be an absolute rule in *Albertson* was moderated in *Pape v. Kansas Power and Light Co.*, 231 Kan. 441, 647 P.2d 320 (1982). There, a worker killed in a powerline accident settled with his employer under the workers compensation act; his heirs were statutorily barred from suing his employer, and he could not bring other defendants into the workers compensation proceedings. In that situation, the court held an action against the power company could proceed and the power company could introduce evidence of the employer's negligence in assessing comparative fault and corresponding damages. 231 Kan. at 449. This result pointed out the potential unfairness of binding a plaintiff to just one action, in that case, a statutory workers compensation claim, when the plaintiff had no choice in the matter.

This court again backed away from strict application of the one-action rule in *Mathis v. TG & Y*, 242 Kan. 789, 751 P.2d 136 (1988), where the plaintiff filed successive suits arising out of the same event, naming different defendants in each petition. The plaintiff then settled with the defendants in one suit, and the action was dismissed with prejudice. The issue was whether a dismissal with prejudice in one case precludes a trial in the other action. It was held the settlement and dismissal did not qualify as a "judicial determination of comparative fault" precluding a trial on the merits against different defendants based on the same occurrence. 242 Kan. at 794.

In *Anderson v. Scheffler*, 242 Kan. 857, 752 P.2d 667 (1988), this court addressed the situation in which a plaintiff might not be able to pursue claims against all tortfeasors because of diversity jurisdiction conflicts. The plaintiff sought to sue multiple defendants in state court, but diversity defendants removed the action against them to federal court, and the plaintiff was unable to pursue claims against the entire set of defendants in a single action. This court held that, under those facts, the single-action rule did not apply: "[W]here a plaintiff is prevented from joining a necessary party in federal court because of loss of diversity, as in this case, the action against that party survives in state court . . . ." 242 Kan. at 865.

Soon thereafter, this court decided the case cited in the federal court certification order. In *Childs v. Williams*, 243 Kan. 441, 757 P.2d 302 (1988), the plaintiff, a minor, settled with one defendant. Because K.S.A. 38-102 allows a minor to disavow a contract within a reasonable time after reaching majority, the settlement was converted to a judgment with court approval to make the settlement binding. Later, the plaintiff filed an action against another defendant. The issue was whether the previously entered judgment precluded a trial on the merits in a second action against a different defendant.

The defendant attempted to distinguish *Mathis*, arguing the district court played a substantive role in evaluating the settlement and reducing it to judgment, whereas *Mathis* dealt only with dismissal by the court. This court was not persuaded and concluded that "each plaintiff must be allowed a trial judicially determining comparative fault, regardless of whether the plaintiff had the opportunity to do so earlier in one action." *Childs*, 243 Kan. at 443. Implicitly, the court held a judgment rendered to ensure that a minor did not later disavow a settlement contract was not a judicial determination of comparative fault precluding a trial on the merits.

This court reaffirmed its commitment to the one-action rule in *Mick v. Mani*, 244 Kan. 81, 766 P.2d 147 (1988), where a surgery patient brought a products liability action

against Bethlehem Steel and, in a separate action, a medical malpractice action against the surgeon. In the action against Bethlehem Steel, the jury found no fault on the defendant's part and did not get to whether there was comparative fault on the surgeon's part. Based on the one-action rule, the district court then granted summary judgment to the surgeon in the separate malpractice action. The patient's strategy of pursuing separate and sequential actions backfired. This court affirmed, holding that, where practically feasible, litigation against all possible tortfeasors must be carried out in a single action and a judicial determination of no fault by one tortfeasor precluded a subsequent claim against a different tortfeasor.

We now turn to the first question certified to us by the federal district court: under Kansas law, does an arbitration action qualify as a judicial determination of comparative fault where no other potential tortfeasors were involved in the arbitration? We hold that the answer is no.

Of course, an arbitration action is clearly not a judicial determination of anything standing on its own. The arbitration process is extrajudicial. See *Fidelity and Deposit Co. v. Davis*, 129 Kan. 790, 801, 284 P. 430 (1930) (arbitration agreements are "simple and expeditious extra-judicial settlements").

However, we understand the federal court to be inquiring whether an arbitration action may take the place of a judicial determination of comparative fault for purposes of the one-action rule. In other words, by participating in arbitration with one set of defendants, does a plaintiff forfeit litigation against another set of defendants in a negligence action when the plaintiff does not bring the second set of defendants into the arbitration proceeding for determining comparative fault?

The one-action rule is not expressly contained in the comparative fault statute. It is instead based on principles of judicial economy and avoiding complexity in determining

relative degrees of fault. "The rule against the splitting of a cause of action is based upon varied and justifiable concerns: preserving judicial economy and convenience; avoiding repetitive or fragmented litigation; and protecting a party from multiple harassment and expense over the same claim." *Home State Bank v. P.B. Hoidale Co*., 239 Kan. 165, 169, 718 P.2d 292 (1986).

For similar reasons, Kansas courts "have always taken the position that compromise and settlement of disputes between parties should be favored in the law in the absence of fraud or bad faith. *Kennedy v. City of Sawyer*, 228 Kan. 439, 454, 618 P.2d 788 (1980). And this court has permitted parties to settle disputes with some tortfeasors while continuing with litigation against others. See, e.g., *Brown v. Keill*, 224 Kan. 195, 580 P.2d 867 (1978) (car accident tortfeasor settled claim by other driver but owner of other driver's car allowed to proceed with claim for damages to car); *Childs*, 243 Kan. at 449 (minor settled claim against driver of car in which minor was injured in accident; minor was allowed to proceed with claim against driver of other car involved in accident); *Mathis*, 242 Kan. at 789 (settlement of second suit does not bar plaintiff from proceeding with original action); *Pape*, 231 Kan. at 449 (settlement of claim against employer under workers compensation act does not preclude litigating claim against third party).

One aspect of a negotiated settlement can be an agreement to resolve disputes through arbitration. See, e.g., *Heartland Surgical Specialty Hosp., LLC v. Reed*, 48 Kan. App. 2d 237, 239, 287 P.3d 933 (2012). Arbitration largely avoids consuming court resources, which is a significant objective of the one-action rule. It is a way in which parties with irreconcilable differences may reach an expeditious resolution of their differences without resorting to litigation. It resembles mediation and settlement in that judicial participation is generally limited to confirming the award. In this respect, arbitration is akin to other out-of-court proceedings that do not trigger the one-action rule.

Kansas courts generally favor agreements to arbitrate disputes. See *Coulter v. Anadarko Petroleum Corp*., 296 Kan. 336, 370, 292 P.3d 289 (2013). Arbitration is consistent with the objectives of the one-action rule in much the same way as other pre-litigation alternatives that the law favors, such as negotiated and mediated settlements. We will not introduce disincentives to resolving disputes outside the judicial process. Arbitration is not the equivalent of a court proceeding, and, at least under the facts presented to us, it does not qualify as a judicial determination of comparative fault where no other potential tortfeasors were involved in the arbitration.

We turn now to the second question that the federal court certified: does the confirmation of an arbitration award by a state court judgment qualify as a judicial determination of comparative fault in light of *Childs*? We again answer no.

The Walinga defendants urge this court to decide that, at least in the circumstances in which an arbitrator allocates a percentage of fault to the parties to the arbitration, the judicial confirmation of such an award constitutes a judicial determination of fault. We disagree.

The arbitrating parties in this case agreed to apply Kansas procedural law. An arbitration confirmation proceeding is of limited scope. K.S.A. 5-444 provides that, after a party to an arbitration proceeding receives notice of an award, the party may make a motion to a court for an order confirming the award, "at which time the court shall issue a confirming order, unless the award is modified or corrected pursuant to K.S.A. 5-442 or 5-446, and amendments thereto, or is vacated pursuant to K.S.A. 5-445, and amendments thereto." K.S.A. 5-445 sets out limited circumstances under which the court may set aside the award, and there is no allegation that those circumstances apply in this case.

The confirmation process establishes an enforceable judgment. It does not constitute an independent judicial proceeding establishing liability of the parties or

comparative fault. It is generally not the role of courts to second-guess arbitration awards or to enter independent judgments when asked to confirm such awards. See *City of Coffeyville v. IBEW Local No. 1523*, 270 Kan. 322, 336, 14 P.3d 1 (2000) (courts bound by arbitrator's findings of fact and conclusions of law so long as errors not in bad faith or so gross as to amount to affirmative misconduct); *Alexander v. Everhart*, 27 Kan. App. 2d 897, 900-01, 7 P.3d 1282, *rev. denied* 270 Kan. 897 (2000) (district court must presume arbitrator's award is valid unless Arbitration Act grounds are specifically proven).

The order confirming the award in this case made no independent factual findings. The court did not conduct an evidentiary hearing and made no explicit findings regarding comparative fault. The parties apparently did not seek such a determination of fault, and the court did not discuss the possible degree of fault by parties that did not participate in the arbitration. Simply approving that an award comports with statutory and due process requirements does not amount to a judicial determination of fault.

In the absence of "a judicial determination of comparative fault," a plaintiff may pursue separate actions against tortfeasors. See *Mick*, 244 Kan. at 93. The *Mick* court stated that the "one-action rule should, perhaps, more accurately be described as the one-trial rule" because it is only through a trial, not through settlements and the removal of potential defendants from actions, that comparative fault can be established. 244 Kan. at 93.

The *Mick* so-called "one-trial rule" was based, in part, on *Childs*. The minor plaintiff in *Childs* settled out of court with the driver of the car in which she was a passenger. A district court order approved the settlement. No determination of comparative fault was made, and the plaintiff made no attempt to preserve a right of action against the driver of the other car in the settlement agreement. This court allowed a suit against the driver of the other car to proceed, acknowledging that "a plaintiff is not

barred from bringing further suits against additional defendants concerning the same cause of action until it has actually received a *comparison of fault at trial*." (Emphasis in original and added.) 243 Kan. at 443. Nothing prevented the plaintiffs from joining all the defendants in one suit, but the plaintiff elected to settle against one of the defendants extrajudicially. The result was that there was no judicial determination of comparative fault in the plaintiff's first action, and the plaintiff was allowed to proceed with her second action. This closely resembles the situation in the present case.

We conclude that the confirmation of an arbitration award by a state court judgment does not qualify as a judicial determination of comparative fault so as to invite application of the one-action rule.